

EXHIBT A

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

JOSEPH J. HESKETH III, on)
his behalf and on behalf)
of other similarly)
situated persons,)

Plaintiff,)

vs.)

No. 2:20-cv-01733-JLR

TOTAL RENAL CARE, INC., on)
its own behalf and on)
behalf of other similarly)
situated persons,)

Defendants.)

30(b)(6) DEPOSITION UPON ORAL EXAMINATION

OF

JEREMY MICHAEL EAVES

Conducted via Zoom

ATTENDANCE OF ALL PARTICIPANTS VIA ZOOM VIDEO CONFERENCE

DATE: May 10, 2021

REPORTED BY: Olivia Pennella

<p style="text-align: right;">Page 6</p> <p>1 Monday, May 10, 2021 2 12:10 p.m. PDT 3 ----- 4 THE COURT REPORTER: We are on the record. 5 MS. PETERSEN: Thank you. This is Chelsea 6 Petersen for defendant, Total Renal Care. 7 MS. HENRY: If you'll wait for a moment, 8 Chelsea. As I mentioned, we are about to come on to the 9 thing. So just give us one minute, please. 10 MS. PETERSEN: Okay. I'm simply introducing 11 myself -- 12 MS. HENRY: Thank you. 13 MS. PETERSEN: -- and indicating that we are 14 here and ready to begin the deposition. 15 MS. HENRY: And I understood that. As I said, 16 I'm trying -- I will be on in a minute. I'm almost off 17 the phone. Just a minute. 18 MS. PETERSEN: Thank you. We can go off the 19 record. 20 (Recess taken from 12:10 p.m. to 12:48 p.m.) 21 JEREMY MICHAEL EAVES, witness herein, having been duly 22 sworn by the Certified Court 23 Reporter, testified as follows: 24 ///25 /// <p style="text-align: right;">Page 7</p> <p>1 EXAMINATION 2 BY MR. JONES: 3 Q. Mr. Eaves, I'm Craig Jones. And I appreciate 4 your patience. Quite often in corporate depositions, 5 things drag early on. And we'll try not to take up any 6 more of your time than is necessary. 7 Now, I'm going to start with the first 8 question. It's the one that you always hear in your 9 lawyer programs. I'm going to ask you to state your 10 full name, please. 11 A. Sure. Jeremy Michael Eaves. 12 Q. Mr. Eaves, where do you live? 13 A. I live in Broomfield, Colorado. 14 Q. How far is that from Denver? 15 A. I would say about 18 miles from door to 16 office. 17 Q. Where are you right now located, physically? 18 A. I'm in my home office in Broomfield, Colorado. 19 Q. Okay. I'd like you to -- well, first of all, 20 let me tell you how I'm going to take the deposition. 21 This is a corporate deposition of DaVita. Are you aware 22 of that? 23 A. I am. 24 Q. Have you ever given a deposition before? 25 A. I have.</p> </p>	<p style="text-align: right;">Page 8</p> <p>1 Q. On how many occasions have you given a 2 deposition? 3 A. One time. 4 Q. And what was the occasion for that one 5 deposition? 6 A. It involved an investigation that was 7 conducted internally, DaVita. 8 Q. Would you say a little bit more about that? 9 I'm -- I don't -- 10 It doesn't sound like it involves what we're 11 here today about, but I've got to ask little questions. 12 Was it an internal investigation with DaVita, or tell me 13 something about it? 14 A. Yes, it was an internal investigation that 15 involved DaVita. 16 Q. How long have you worked for DaVita? 17 A. Ten years, six months. 18 Q. Let me give you the ground rules. Hang on. 19 I want you to answer out loud, please. You're 20 doing a good job of that. If you continue to do so, 21 I'll appreciate it. Will you do that for me? 22 A. Yes. 23 Q. This lady is a court reporter right here, and 24 she's going to be taking down everything that we say 25 today and put it in booklet form. But if we both speak</p> <p style="text-align: right;">Page 9</p> <p>1 at the same time, the way that she's trained, she'll 2 indicate in the deposition that we are both speaking at 3 the same time; or she would put one-half of the question 4 on one line, your answer on the second line, and the 5 other half of the question on the third line. 6 And that makes for awkward reading when this 7 comes out in booklet form. So even though you may 8 understand and probably will understand my question 9 before I finish it, if you would hesitate just a second 10 before you begin your answer and let me finish my 11 question, and I'll hesitate just a second after you 12 finish your answer to begin my next question. 13 Does that make sense, what I'm saying? 14 A. It does. 15 Q. Okay. Now, I'd like to ask you to do this for 16 me. If I should ask you a question and you don't 17 understand it, I really don't want you to answer the 18 question. 19 What I want you to do is tell me that you 20 don't understand it, and I will rephrase the question as 21 many times as I need to until we understand the 22 question. Will you do that for me? 23 A. Yes, I will. 24 Q. Conversely, if I ask you a question and you 25 answer that question, I'm going to assume that you</p>
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<p style="text-align: right;">Page 10</p> <p>1 understood my question and that your answer was fairly 2 directed towards the question I asked; is that fair? 3 A. Yes, I believe so. 4 Q. You realize that today you're under oath as if 5 you were in a court of law? 6 A. Yes, I do. 7 Q. And that means that you have certain 8 obligations. One of those obligations is to tell the 9 truth. You understand that? 10 A. Yes, I do. 11 Q. And are you prepared to tell the truth today? 12 A. Yes, of course. 13 Q. The other obligation you have is to answer 14 questions frankly because, you see, this may be the only 15 opportunity we have to speak to you as representative of 16 DaVita before the trial of this matter. 17 And me and my co-counsel here, as have all the 18 lawyers in this deposition, have taken an oath to 19 represent our clients to the best of our ability. And 20 so we want to make sure that we get a good, frank 21 answer. Now, are you prepared to give frank answers 22 today? 23 A. Mr. Jones, can you tell me what the 24 expectation will be around frank? 25 Q. Certainly. Now, let's say that you came home</p>	<p style="text-align: right;">Page 12</p> <p>1 your educational background, starting with high school 2 and just bring me forward? 3 A. Sure. I graduated from high school in 1989. 4 I attended undergraduate and graduate school. Both of 5 those degrees were obtained at Colorado State 6 University. My undergraduate degree is in technical 7 journalism. 8 I went immediately after graduation that fall. 9 And my advanced degree, which is a master of science, is 10 officially called student affairs in higher education, 11 also known as higher education administration. 12 Q. Why don't you give me a thumbnail sketch of 13 your work history, just starting with when you finished 14 college and bring me forward? 15 A. Sure. I'm happy to do so. After I obtained 16 my master's degree, I worked for a couple of years at 17 the University of Colorado at Boulder. My 18 responsibilities there were as a full-time hall 19 director, where I was responsible for doing judicial 20 hearings for students who received infractions and also 21 was responsible for the living environments that the 22 students that were in the residence hall facilities I 23 oversaw. 24 I decided that the compensation was not enough 25 to keep me afloat, and quickly decided to see if it</p>
<p style="text-align: right;">Page 11</p> <p>1 one evening and your wife or your spouse said, "Jeremy, 2 where have you been?" That would be an easy question. 3 But if your wife or your spouse said, "Jeremy, have you 4 been down at this saloon across from the courthouse?" 5 And in fact you had been down at the saloon 6 across from the railroad tracks; and you looked at your 7 spouse or your wife, and you said, "No, I haven't been 8 down that saloon across from the courthouse." That 9 would be an honest answer, but it wouldn't be frank. 10 Do you understand my example? 11 A. I -- I do understand your answer. I -- I 12 understand what you're trying to get to, yes. 13 Q. Okay. Are you prepared, sir, to answer all my 14 questions frankly today? 15 A. Yes, I am. 16 Q. All right. Thank you. Now, we're here to 17 take a corporate deposition of DaVita. Do you know what 18 a corporate deposition is? 19 A. I do have a general understanding, yes. 20 Q. Before we get started with that, I'd like you 21 to tell me a little something about yourself. And I'm 22 not going to pry, but we're asked to -- allowed to ask 23 something about the person who's answering the 24 questions. 25 Why don't you give me a thumbnail sketch of</p>	<p style="text-align: right;">Page 13</p> <p>1 would be possible for me to go to the corporate world. 2 In short, my next job was at Oppenheimer Funds, where I 3 was a learning and development instructor. I was there 4 for a couple of years. I then went on to a company by 5 the acronym of ING -- N for Nancy, G for Group. It was 6 an international company that came into the United 7 States. 8 And I was what we called at the time a human 9 resources generalist, which eventually landed with me 10 being a lead human resources consultant. I was there 11 for about five years. And then I did a very similar 12 job, where I was doing generalist HR responsibilities 13 for a subsidiary of KeyBank called Key Equipment 14 Finance. I was also there for five years, at which time 15 I applied and received a job at DaVita. I've worked at 16 DaVita, as I mentioned earlier, for ten years and 17 six months. 18 Q. What is your current position with DaVita? 19 A. My title is vice president, people services 20 operations. 21 Q. Who's your immediate supervisor? 22 A. My immediate supervisor is the chief people 23 officer. 24 Q. See, I don't -- I don't know if I know who the 25 chief people officer is. Does that person have a name?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. Sure. I'm sorry about that. Yes. His name 2 is Kenny Gardner. 3 Q. Okay. Sometimes I may have to ask you 4 questions, the answers are obvious and, you know, I 5 already know the answer. But I'm just making a record. 6 Okay? 7 A. Yeah. And, Mr. Jones, you'll have to keep me 8 honest. We have a lot of different acronyms and names 9 at DaVita that might be unusual in the corporate world. 10 I will do my very best to -- to make that something that 11 I'm trying to be clear on, but feel free to remind me. 12 I'm happy to break down those acronyms or give you more 13 explanations if needed. 14 Q. I know. I appreciate that. 15 What does Palmer stand for? 16 A. Palmer can mean a couple of different things. 17 Palmer can mean a geographic region. And so we've got 18 Palmers throughout the United States, which basically 19 kind of describes the regional operations we may have in 20 the domestic United States. 21 We also use the title to refer to the leaders 22 of those groups. Those are also called group -- group 23 vice presidents or GVPs and -- and they will lead those 24 Palmer groups. 25 Q. I'm going to ask you to just get me through</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. JONES: Well, I want to attach some 2 documents to the deposition now. And we'll start with 3 attaching -- give me a second. 4 And Madam Court Reporter, we're going to 5 attach to -- to reference it. 6 If that's okay with you, Ms. Petersen, rather 7 than drag the deposition down and turn it into something 8 that's unwieldy. 9 MS. PETERSEN: What do you mean by "attach" -- 10 by -- what was the phrase you just used? 11 MR. JONES: Reference. 12 MS. PETERSEN: Reference. How do you -- 13 MR. JONES: We have -- yeah. Well, we had 14 previously identified 15 documents as Exhibits 1 15 through 15 that were used in the last depositions. And 16 they were provided to you again today. 17 MS. HENRY: And, Craig, it was -- there were 18 16. I checked. 19 MR. JONES: 16. Okay. And -- hang on one 20 second. And I want to start out by attaching those 21 documents. I can have -- and, look, I'll send them to 22 the court reporter, if you want them attached to this 23 deposition. 24 But I generally -- we know what they are. 25 And, you know, I don't know that whoever has to read</p>
<p style="text-align: right;">Page 15</p> <p>1 that again because -- I think I understand what you 2 mean. But, I mean, is -- one more time, if you don't 3 mind. 4 A. Sure. 5 Q. Can you just answer that question again? I'm 6 struggling with it. Can you help me understand a little 7 better? 8 MS. PETERSEN: Objection. Asked and answered. 9 Go ahead. 10 A. Yes, I can. So again we would -- we would use 11 the term "Palmer" to describe two separate things. We 12 have geographic operational regions throughout the 13 country. And off the top of my head, I think we have 14 nine or ten of those. And those would be distinct 15 geographic operational regions. 16 Just to put that in context, there are three 17 groups that are Palmers -- like Galaxy, Titan, Endeavor. 18 We would also refer to the leader of those groups as a 19 Palmer. So we might say, "What Palmer will be attending 20 that meeting today?" And that could also reference the 21 specific leader who is the operational lead for that 22 regional group. 23 Q. (By Mr. Jones) Okay. Thank you. That 24 probably eliminated about 15 questions I had for you 25 right there. I appreciate it.</p>	<p style="text-align: right;">Page 17</p> <p>1 these depositions appreciates them all being attached to 2 every one of them. But it's your pleasure, however you 3 want to handle it, Ms. Petersen. I mean -- 4 MS. PETERSEN: I don't mind if they're 5 attached. I'm just wanting to make the point, which we 6 did prior to this deposition starting, that the witness 7 doesn't have access. So in terms of sharing a 8 particular document -- 9 MR. JONES: You didn't send them to him? 10 MS. PETERSEN: No. I made that clear -- 11 MR. JONES: You did not send them to him? 12 MS. PETERSEN: I made -- 13 MR. JONES: You're not going to? 14 MS. PETERSEN: May I finish, please? I made 15 clear in advance of the deposition that in the past six 16 depositions that we've had so far in the case, we have 17 not provided the exhibits in advance to the witness. 18 So, no, this witness has not received the 19 Exhibits 1 through 16. The practice so far in the 20 depositions has been to simply introduce them and share 21 on the screen. 22 MS. HENRY: And the court reporter has all 16 23 of them. 24 MR. JONES: Thank you. 25 Madam Court Reporter, let us attach those --</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">Page 18</p> <p>1 hang on -- as Exhibits 1 through 16, please. We would 2 also attach as Exhibit 17 the DaVita Notice of Corporate 3 Deposition, with the Third Amended Topics, Attachment A. 4 Our subpoena will be Exhibit 18. And 19, 5 we'll have Amended Notice of Deposition of Jeremy Eaves 6 for the 30(b)(1) deposition that may follow this one if 7 necessary. Hopefully it won't be, Mr. Eaves. 8 (Exhibits-1 through 19 marked for 9 identification.) 10 MR. JONES: All right. Ms. Petersen, you 11 follow our exhibits? 12 MS. PETERSEN: Looking for a little 13 clarification on 17. That's just going to be the -- 14 well, help me understand, if you would, what 17 is going 15 to be? 16 MR. JONES: I think Ms. Henry sent you a copy 17 of it today. 18 MS. HENRY: I did not, so I will send those to 19 her now. I sent it to the court reporter. 20 All right. Confirm when you get them, so I 21 know that they've gotten to you. 22 MS. PETERSEN: Will do. And, Christina, do 23 you mind confirming -- since the subpoena was just, I 24 think, revised and amended, even after kind of we were 25 set to start today, are we looking at that most recent</p>	<p style="text-align: right;">Page 20</p> <p>1 that is still relevant. But it's fine for it to be an 2 exhibit. I'm opening 19 here quickly as well. 3 To confirm, is 19 what was provided today? 4 MS. HENRY: No. 19 was the 30(b)(1) of -- 5 MS. PETERSEN: I see. 6 MS. HENRY: -- Jeremy Eaves. And that was 7 provided whatever date that was. April 24th is when the 8 updated date was. 9 MS. PETERSEN: Okay. I -- 10 MS. HENRY: After, I think, the Court's 11 ruling. 12 MS. PETERSEN: Got it. Thank you. I see that 13 it's there -- 14 MS. HENRY: Yeah. 15 MS. PETERSEN: -- the 30(b)(1). Thank you. 16 MR. JONES: Hang on. Now, does Mr. Eaves have 17 access to Exhibit No. 17? 18 MS. PETERSEN: No. 19 MR. JONES: Are you going to provide him 20 access to that, Counsel? 21 MS. PETERSEN: No. Counsel, as I've explained 22 in advance of the deposition, the way that we've handled 23 this so far in each -- and so the expectation that we 24 had for this was that we would share exhibits via Zoom, 25 that it's not something where I was providing the</p>
<p style="text-align: right;">Page 19</p> <p>1 version or a prior version? 2 MS. HENRY: That most recent version. 3 MS. PETERSEN: Okay. Okay. The email just 4 came through. I'm opening the documents now. So to be 5 clear, the Exhibit 17 is the notice that was setting the 6 dep back when it was a notice and when the date was 7 April 5? I just want to -- 8 MS. HENRY: Yes, that's my understanding, yes. 9 MS. PETERSEN: Okay. 10 MR. JONES: Yeah, I mean, we agreed to move it 11 to this date, didn't we? I didn't see any reason to 12 paper up on that. 13 MS. PETERSEN: The concern is that that is 14 presented as a notice; whereas, you know, ultimately 15 the -- it needed to be a subpoena for a non-party, but I 16 believe that is what Exhibit 18 is. 17 MR. JONES: Yeah, I mean, we also agreed that 18 the subpoena we served -- that you accepted -- that we 19 would end up moving it till today. I don't want the 20 record to sound like we surprised you in any way. We've 21 agreed to all of this, haven't we? 22 MS. PETERSEN: We have agreed that there is a 23 subpoena that compels testimony today, yes, definitely. 24 17 -- the -- my questions related to 17 are simply just 25 that I think this is both out of date and not in a form</p>	<p style="text-align: right;">Page 21</p> <p>1 exhibits in advance to the deponent. 2 MR. JONES: I specifically asked you today to 3 provide that to him. I don't want to have to sit 4 here and put -- let me finish and explain why. I 5 have -- we have a 13-page document here and limited time 6 to take this witness's deposition. I don't want to have 7 to put one page at a time, have him look and zoom, and 8 he can't -- and then I ask him the first question, "Have 9 you seen this document before?" 10 "Well, hold on. Let me look at 13 pages on 11 Zoom," you know. I mean, that's one of the first 12 questions that's always asked in a 30(b)(6) deposition. 13 I -- you know, the -- I'm going to ask you to provide 14 him a copy of what it is, so that we can get it -- 15 identify that we're talking about the same thing. It's 16 not -- that's not hard to do. I don't think that's an 17 unreasonable request. 18 MS. PETERSEN: Counsel, as I've explained, the 19 witness is very familiar with the documents in this case 20 and has had an opportunity to read the documents in this 21 case. I don't think you're going to have any issue with 22 unfamiliarity or with situations where it's going to 23 require any undue time to review documents. 24 And as I explained in advance, the plan is 25 just to show the exhibit that you would like the witness</p>

<p style="text-align: right;">Page 22</p> <p>1 to address. And that's all we need to do.</p> <p>2 MR. JONES: Okay. We are very close to</p> <p>3 shutting this thing down right now and go to the judge</p> <p>4 right now. I'm asking a reasonable accommodation. If</p> <p>5 he doesn't have a copy of this document, I would</p> <p>6 appreciate you emailing it to him. He's your witness.</p> <p>7 He's your corporate rep. I can't contact him.</p> <p>8 MS. PETERSEN: Counsel, these are your</p> <p>9 exhibits. All right. Tell me which exhibit you would</p> <p>10 like me to email to the witness and --</p> <p>11 MR. JONES: 17.</p> <p>12 MS. PETERSEN: -- I will. But I'm very</p> <p>13 careful with depositions, that we make sure that the</p> <p>14 witness has the opportunity to just focus on exactly</p> <p>15 what's being asked; and that to the extent that the</p> <p>16 witness is trying to go through email or to open</p> <p>17 documents, things like that, that can add unnecessary</p> <p>18 complications for everybody involved.</p> <p>19 So the idea was to attempt to be streamlined</p> <p>20 about this -- have the witness be fully prepared to</p> <p>21 testify here and for the witness to be able to view the</p> <p>22 exhibits that are shown, not every possible exhibit that</p> <p>23 there could be.</p> <p>24 So if there's a particular exhibit that would</p> <p>25 be helpful for me to provide to the witness right now, I</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Okay. What is the first occasion you had to</p> <p>2 see this document?</p> <p>3 MS. PETERSEN: Object to form.</p> <p>4 MR. JONES: What's the objection to the form?</p> <p>5 MS. PETERSEN: Vague, in terms of the</p> <p>6 occasion. Are you asking when he first saw? Again,</p> <p>7 trying to get clarity here.</p> <p>8 Q. (By Mr. Jones) Do you understand the</p> <p>9 question, Mr. Eaves?</p> <p>10 A. I do understand the question. I saw it this</p> <p>11 morning.</p> <p>12 Q. Have you seen this document before this</p> <p>13 morning?</p> <p>14 A. I have not.</p> <p>15 Q. Okay. Have you seen some -- what appears to</p> <p>16 be some version of this document before this morning?</p> <p>17 A. I have not.</p> <p>18 Q. Do you realize that you're being produced as a</p> <p>19 corporate representative to give corporate knowledge on</p> <p>20 behalf of DaVita?</p> <p>21 A. I am aware of that, yes.</p> <p>22 Q. What does that mean to you?</p> <p>23 A. That means that I'm speaking on behalf of the</p> <p>24 company, as a company representative.</p> <p>25 Q. Okay. Now, do you know which of the</p>
<p style="text-align: right;">Page 23</p> <p>1 will provide it -- an individual exhibit to the witness</p> <p>2 right now. But I don't think that saves us any time</p> <p>3 over simply just sharing the document and we're all</p> <p>4 looking at it together.</p> <p>5 MR. JONES: Exhibit 17, please.</p> <p>6 MS. PETERSEN: I have transmitted a copy of</p> <p>7 Exhibit 17 to the witness.</p> <p>8 Q. (By Mr. Jones) Mr. Eaves, tell me when you</p> <p>9 get that document, please.</p> <p>10 A. I -- to be clear, I have not opened my email.</p> <p>11 I did not have that open, or we would be hearing dings</p> <p>12 all day. So if the expectation is that I go on there, I</p> <p>13 will do that. Give me a quick second.</p> <p>14 Q. Are you looking at Exhibit 17, sir?</p> <p>15 A. I have just opened the document. Yes. Mine</p> <p>16 says, "In The United States District Courts." I just</p> <p>17 want to make sure it's the correct one. Can I get</p> <p>18 clarification? Am I just supposed to have this document</p> <p>19 open, or would you like me to read it? I'm not sure</p> <p>20 what I'm supposed to do --</p> <p>21 Q. Oh, no, you don't have to read it. I'm just</p> <p>22 going to ask you -- I'll tell you why I want you to look</p> <p>23 at it, because my next question is going to be: Have</p> <p>24 you ever seen this document before?</p> <p>25 A. I did see this document, yes.</p>	<p style="text-align: right;">Page 25</p> <p>1 designation of topics to the testimony you're being</p> <p>2 produced to give corporate knowledge about today?</p> <p>3 A. Can you rephrase your question?</p> <p>4 Q. Sure, I'd be happy to. And I appreciate that,</p> <p>5 Mr. Eaves. That's what I want you to do. If you don't</p> <p>6 understand it, tell me; and I'll rephrase. Thank you.</p> <p>7 When we look at the document, you'll see that</p> <p>8 there are 37 topics on the document, I believe. Follow</p> <p>9 me?</p> <p>10 Now, some of them you'll see that the topic</p> <p>11 just says "Withdrawn." Okay? So when I speak of all</p> <p>12 the topics, it's not a trick question. I mean, I'm just</p> <p>13 trying to get an in globo understanding of what you know</p> <p>14 and what you understand is your role here today. It's</p> <p>15 not -- I'm not trying to hide anything from you or trick</p> <p>16 you.</p> <p>17 Now, are you being produced today to speak to</p> <p>18 all 37 of those topics, save and except the ones that,</p> <p>19 you know, have been withdrawn?</p> <p>20 MS. PETERSEN: Counsel, if I can interject for</p> <p>21 a moment. Exhibit 17 is not the current version of the</p> <p>22 topics. Exhibit 17 reflects what was from back in --</p> <p>23 this is dated March 8. The list has subsequently</p> <p>24 changed since then. So to your referencing --</p> <p>25 MR. JONES: Well, let's take a short break.</p>

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 Hang on. Let's take a short break.</p> <p>2 MS. PETERSEN: If I may finish.</p> <p>3 -- to the topics that were referenced to</p> <p>4 having been withdrawn, this is not the notice that</p> <p>5 includes those -- any withdrawn topics.</p> <p>6 MS. HENRY: Exhibit 18 is a subpoena with the</p> <p>7 documents attached.</p> <p>8 MR. JONES: Oh, okay. My mistake.</p> <p>9 MS. HENRY: The topics attached.</p> <p>10 MR. JONES: So these --</p> <p>11 MS. HENRY: Exhibit 17 is just the --</p> <p>12 MR. JONES: All right. Well, let's go to</p> <p>13 that. Thank you.</p> <p>14 MS. PETERSEN: Again, the witness does not a</p> <p>15 have a copy of Exhibit 18. If you want to share that</p> <p>16 document.</p> <p>17 MR. JONES: Let's just share with him,</p> <p>18 Christina, because I don't feel like squabbling over</p> <p>19 this anymore. All right?</p> <p>20 MS. HENRY: Okay. Just a second. All right.</p> <p>21 Can everyone see that?</p> <p>22 MR. JONES: I can see the top half of it.</p> <p>23 Q. (By Mr. Jones) Can you see it, Mr. Eaves?</p> <p>24 THE WITNESS: I'm able to see the screen</p> <p>25 projection, Ms. Henry.</p>	<p style="text-align: right;">Page 28</p> <p>1 able to just, without much ado, be able to identify the</p> <p>2 document that we've sent through the attorney to the</p> <p>3 witness and be able to establish that we're both talking</p> <p>4 about the documents that that corporate representative</p> <p>5 has reviewed and is there to address.</p> <p>6 The reason that we do that is because</p> <p>7 sometimes people show up, they don't know why they're</p> <p>8 there. They're just an empty suit that's been thrown</p> <p>9 out there. And I don't think that's why you're here.</p> <p>10 But let's see if we can work through this. All right?</p> <p>11 I mean, take your time. I mean, how are we</p> <p>12 going to get through this? I want to -- without me</p> <p>13 asking you what your lawyer told you. All right? I</p> <p>14 want to make sure that you're here to address these</p> <p>15 topics. You take a look at the subpoena, and tell me if</p> <p>16 you are -- if you're being produced to respond to these</p> <p>17 topics.</p> <p>18 A. Mr. Jones, I'm doing a quick scroll. I'm</p> <p>19 paying attention, in the quick scroll, to the bolded</p> <p>20 topics and some of the stuff which is just right after</p> <p>21 it. And I believe that, in my role as corporate</p> <p>22 witness, I should be able to talk to you about all of</p> <p>23 the topics that I'm seeing here today.</p> <p>24 Q. Thank you. Thank you, Mr. Eaves.</p> <p>25 Now, there is also, Mr. Eaves, if you will go</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yes.</p> <p>2 Q. (By Mr. Jones) Can you tell whether you've</p> <p>3 seen this document before?</p> <p>4 A. I cannot say for sure.</p> <p>5 Q. Would you mind sending him a copy,</p> <p>6 Ms. Petersen, so he can look at it and see if he's seen</p> <p>7 it before?</p> <p>8 MS. PETERSEN: Sure.</p> <p>9 MS. HENRY: I'll note that this is updated to</p> <p>10 today's date, and was served this morning.</p> <p>11 MS. PETERSEN: I have transmitted to the</p> <p>12 witness Exhibit 18, served today.</p> <p>13 Q. (By Mr. Jones) Tell me when you can see it,</p> <p>14 Mr. Eaves.</p> <p>15 A. I just received it in my inbox. I am just</p> <p>16 opening it now, Mr. Jones. I'll let you know when I get</p> <p>17 a chance to look at it.</p> <p>18 Q. Sorry about that. I had the wrong doc.</p> <p>19 A. Nope, no problem. So Mr. Jones, I'm not sure</p> <p>20 if I saw this exact document. It looks similar to</p> <p>21 Exhibit 17 that we used before.</p> <p>22 Q. Well, you help me out, Mr. Eaves. I want to</p> <p>23 kind of just motor through this, if we can. Normally</p> <p>24 what happens is we provide, you know, notices and</p> <p>25 topics. That gets to the corporate representative. I'm</p>	<p style="text-align: right;">Page 29</p> <p>1 through this -- if you will go through and look at</p> <p>2 section, I believe it's designated, four -- I just have</p> <p>3 a cheat sheet. I don't have a copy of the exact</p> <p>4 subpoena. I just have all that's been put down kind of</p> <p>5 in block form for me.</p> <p>6 But do you see where it says, "Documents</p> <p>7 Request -- or Requested"?</p> <p>8 A. Yeah. And --</p> <p>9 THE WITNESS: And, Ms. Henry, maybe you can</p> <p>10 help me -- just so I can look at this a little larger on</p> <p>11 the document I've received -- would the footer on</p> <p>12 this be "3rd Amended Schedule A to Subpoena - 10"?</p> <p>13 MS. HENRY: Yes. And I have it on the screen</p> <p>14 for you, also.</p> <p>15 THE WITNESS: It's a little small, but I'm</p> <p>16 happy to navigate.</p> <p>17 MS. HENRY: I can make it a little bigger, if</p> <p>18 you'd like. But it's page 10 of the Schedule A attached</p> <p>19 to the subpoena.</p> <p>20 A. Yes, Mr. Jones, I see "Documents Requested."</p> <p>21 Q. (By Mr. Jones) Are you here today to produce</p> <p>22 these documents on behalf of DaVita?</p> <p>23 A. Can you help me understand what you mean by</p> <p>24 "produce"?</p> <p>25 Q. Well, those -- we've been provided -- in the</p>

<p style="text-align: right;">Page 30</p> <p>1 age of COVID-19, we do things remotely. And in the old 2 days, we used to stroll up into a conference room. And 3 the corporate representative would drag out boxes of 4 documents that probably have been produced ahead of 5 time. 6 And we would go through each item and say, 7 "Okay. Which item are you producing in response to 8 this?" But Counsel has provided us a link, where we 9 were able to download in excess of 7,000 documents 10 today. 11 And my question to you, sir, is that: Are you 12 here prepared to produce these 7,617 documents that's 13 numbered by, I suppose, Counsel? Or is there someone 14 else who's going to show up and say, "Hey, I'm going to 15 produce the documents today"? 16 A. I think what I would say is, I'm -- I'm 17 prepared -- again, a quick glance -- to speak to all of 18 these. So I don't want to get hung up on the word 19 "produce," but I think I'm prepared to -- 20 Q. Yeah. 21 A. -- speak to all of these, yes. 22 Q. Yeah, I know that's a -- it's a technical 23 jargon because, you know, it's been produced 24 electronically -- or remotely, I should say; right? 25 Okay. I think that was a clear answer. Thank</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Generally, or just at DaVita? 2 Q. Well, let's talk about the last time, you 3 know, that you were in an office for DaVita. That's a 4 ter- -- that's going to read terribly, so I'm going to 5 ask a better question. Okay? 6 The last physical office that you were 7 assigned to for DaVita, where was it located? 8 A. It was in a building that we called Casa del 9 Mundo. It's at 2000 - 16th Street, Denver, Colorado 10 80202. And I did have a physical office in that 11 building. 12 Q. You still have an office in that building? 13 A. I do not. I now have a subspace. We have 14 moved to the very open, progressive structure. And I 15 have a cubicle in a building that we call Casa Vida. 16 And that's at 2001 - 16th Street, Denver, Colorado 17 80202. 18 Q. So when did you ascend from an office to a 19 cubicle? 20 A. When we made the -- moved over to the new 21 building. I could not tell you off the top of my head 22 the exact month or year. I'm sorry. 23 Q. Okay. Was it in 2000 -- before 2000? 24 A. It would have been in the last three years 25 probably, three to four years.</p>
<p style="text-align: right;">Page 31</p> <p>1 you, Mr. Eaves. 2 A. You're welcome. 3 Q. Now, Mr. Eaves, tell me what your -- again 4 what your position is right now? You're vice president 5 of people services; is that correct? 6 A. That's correct. Vice president of people 7 services/operations. 8 Q. How long have you held that position with 9 DaVita? 10 A. You're going to be comfortable with -- 11 hopefully, with me ballparking. I think I was promoted 12 into that position in December of 2019. 13 Q. I don't have a problem in the world with you 14 estimating, Mr. Eaves, if you would just please tell us 15 that you're estimating. Because in fairness to you, I 16 don't want this deposition to come out and make it sound 17 like you're speaking to something as a fact, when in 18 fact you're estimating. 19 Can you do that for me, please? 20 A. Yes, of course. 21 Q. Thank you. Well, let's talk about this. I 22 mean, do you have an office assigned to you by DaVita? 23 A. I do not. 24 Q. Okay. Have you ever had an office assigned to 25 you by DaVita, in an office building?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. But you are still assigned to a workspace in 2 Casa DaVita, right? 3 A. In Casa Vida, I do have an assigned workspace, 4 that is correct. 5 Q. Okay. And do you keep regular hours at that 6 assigned workspace at Casa DaVita? 7 A. No. 8 Q. Have you ever kept regular hours at that 9 workspace in Casa DaVita? 10 A. No, I would not say there would be regular or 11 consistent hours. 12 Q. All right. Can you say more about that? 13 A. I can. My job is one where it's not always 14 necessary for me to be in the building, and I also 15 travel. It might not be unusual for me to have a call 16 that might go until 8:00 p.m. or 9:00 p.m. 17 I might be inclined to start my day a little 18 later. I could start my day at 6:00 a.m. and leave. So 19 there's huge degrees of discretion that I'm allowed to 20 interact with, to conduct my job. 21 Q. What was the position you held before this 22 position as vice president? 23 A. Senior director of people services. 24 Q. I'm going to ask you the same series of 25 questions. Did you have an assigned workspace, when you</p>

<p style="text-align: right;">Page 34</p> <p>1 were a senior director?</p> <p>2 A. Yes, I did have an assigned workspace.</p> <p>3 Q. Did you keep regular hours at that assigned</p> <p>4 workspace?</p> <p>5 A. I did not.</p> <p>6 Q. Have you ever kept regular hours with DaVita,</p> <p>7 in your ten years?</p> <p>8 A. No, sir. Mr. Jones, I have not.</p> <p>9 Q. Are you a non-exempt employee with DaVita?</p> <p>10 A. Mr. Jones, I'm an exempt teammate at DaVita,</p> <p>11 yes. Not --</p> <p>12 Q. Okay. You're an --</p> <p>13 A. -- (unintelligible) --</p> <p>14 Q. I'm sorry. You broke up a little bit. I'm --</p> <p>15 would you mind saying that again, please?</p> <p>16 A. My classification has always been exempt,</p> <p>17 during the course of my employment at DaVita.</p> <p>18 Q. Okay. Thank you. Now, let me ask you a</p> <p>19 little bit about DaVita. Okay? I want to ask you about</p> <p>20 DaVita's corporate structure.</p> <p>21 Now, DaVita itself is structured as a</p> <p>22 corporation. Is that your understanding?</p> <p>23 A. Can you repeat that? You broke up a little</p> <p>24 bit.</p> <p>25 Q. Sure. There's a storm going on here, and I</p>	<p style="text-align: right;">Page 36</p> <p>1 Does DaVita Inc. have any payroll employees?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Are any of those payroll employees</p> <p>4 non-exempt employees?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Explain that. Are any of them actually</p> <p>7 hands-on in the renal care business, I mean, actually</p> <p>8 treating patients?</p> <p>9 A. Can you rephrase your question? That seems a</p> <p>10 little vague. I just want to make sure I'm answering --</p> <p>11 Q. Sure.</p> <p>12 A. -- your question.</p> <p>13 Q. Well, let me just tell you my understanding.</p> <p>14 My understanding is DaVita Inc. is the parent</p> <p>15 corporation. But the actual, you know, renal care</p> <p>16 facilities, you know, when -- are actually run under</p> <p>17 various wholly-owned subsidiaries in different</p> <p>18 corporations that are owned by the parent corporation,</p> <p>19 DaVita.</p> <p>20 That DaVita -- there's -- even though they</p> <p>21 have these facilities -- it may say DaVita Inc. If you</p> <p>22 look underneath them, the paperwork is actually in the</p> <p>23 name of one of the wholly-owned subsidiaries. Am I</p> <p>24 right, or am I wrong?</p> <p>25 A. That's correct. We have 34 subsidiaries that</p>
<p style="text-align: right;">Page 35</p> <p>1 live in the country. So, you know, it's sort of like</p> <p>2 living in Mayberry, you know, when the train line goes</p> <p>3 down. So the -- when --</p> <p>4 I want to ask you about the business vessel</p> <p>5 known as DaVita. Is that a corporation?</p> <p>6 A. It is.</p> <p>7 Q. And explain to me, if you can, the structure</p> <p>8 of that corporation. Does DaVita, for instance, run all</p> <p>9 of its renal care facilities from the corporate</p> <p>10 structure known as DaVita, or do they have some other</p> <p>11 way to do it?</p> <p>12 A. Yeah. Yeah, Mr. Jones, I don't want to be</p> <p>13 difficult. I also want to be helpful in answering this.</p> <p>14 So let me see if I can do this, and you tell me. DaVita</p> <p>15 is the parent company, and all of their dialysis work</p> <p>16 falls under that DaVita Inc. umbrella.</p> <p>17 Q. Thank you. I was throwing it out there very</p> <p>18 broadly, so you could -- I already know the answer to</p> <p>19 all these questions. Okay?</p> <p>20 Now, I understand that there are 30-something</p> <p>21 companies under the DaVita Inc. umbrella. Am I about</p> <p>22 right?</p> <p>23 A. Yes, I believe there to be 34ish subsidiaries</p> <p>24 under DaVita Inc.</p> <p>25 Q. Tell me a little bit more about DaVita Inc.</p>	<p style="text-align: right;">Page 37</p> <p>1 sit under the DaVita Inc. parent company umbrella.</p> <p>2 Q. Okay. Now, who is your payroll employer?</p> <p>3 A. I'm sorry. You broke up again.</p> <p>4 Q. Who is your payroll employer?</p> <p>5 A. I work for DaVita Inc.</p> <p>6 Q. Okay. Do you know why we're here today?</p> <p>7 MS. PETERSEN: Object to the form.</p> <p>8 A. Yes.</p> <p>9 MR. JONES: What's wrong with the form?</p> <p>10 What's wrong with the form?</p> <p>11 MS. PETERSEN: Ambiguous.</p> <p>12 Go ahead.</p> <p>13 Q. (By Mr. Jones) I don't want to be ambiguous.</p> <p>14 I'm just -- I'm just straight up asking you. Do you</p> <p>15 know why we're here today?</p> <p>16 A. Yes, I have an understanding of why I'm here</p> <p>17 today as a witness.</p> <p>18 Q. Okay. Would you give me your understanding,</p> <p>19 please?</p> <p>20 A. I -- I think the discussion is about whether</p> <p>21 or not non-exempt teammates would be eligible for</p> <p>22 premium pay under our Disaster Relief Policy due to the</p> <p>23 COVID-19 pandemic.</p> <p>24 Q. Okay. Okay. And do you know who it is that I</p> <p>25 represent?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. I -- I know you represent a DaVita teammate, 2 yes. 3 Q. Do you know that teammate's name? 4 A. I -- I believe his name is JJ Hesketh. I'm 5 not sure what the J and the J would stand for. And I -- 6 I only know that through the documentation. I do not 7 know JJ personally. 8 Q. Thank you. So let's go down and take a peek 9 at the topics, and we'll start on topic 1 on the 10 subpoena. Are you looking at it? 11 A. On Exhibit 18, sir? 12 Q. Yes, sir. 13 A. Yes, I do have that in front of me. 14 Q. And it says, "State the facts as to whether 15 DaVita requires its Logo to appear on or be placed on 16 paychecks issued to employees of TRC or any other 17 Subsidiaries." 18 Do you know what we mean by TRC and other 19 subsidiaries? 20 A. Yeah, I'm just -- let me get to that. It's 21 much easier for me to look at the emailed copy. 22 Q. Sure. 23 A. Please state your question, again? 24 Q. Sure. I'm just looking at topic number 1. I 25 kind of want to get the easy ones out of the way, you</p>	<p style="text-align: right;">Page 40</p> <p>1 organization. Are you looking for a name? I just don't 2 understand what additional I can provide you. 3 Q. Well, does DaVita's parent corporation -- how 4 is the -- how are the lines of authority structured in 5 DaVita Inc.? 6 A. Again, there's no line of structure. DaVita 7 Inc. administers -- pay for all -- for all of the 8 subsidiaries that sit under the parent company. 9 Q. Is there -- Total Renal Care -- someone in 10 there can decide, "I don't want to put the DaVita logo 11 on my paycheck anymore. I want to use something 12 different," and that would be that? 13 A. That would not be an accurate statement. 14 Q. Okay. You tell me, then. I mean, someone has 15 to make decisions; right? 16 A. Yes, I'm -- I'm sure somebody makes the 17 decision about that. I -- it would not be up to an 18 individual subsidiary to say whether they do or do not 19 want to put a logo on the paycheck. Again, it's 20 administered from an overarching parent company, which 21 we call DaVita Inc. 22 Q. And then whose decision would it be to put the 23 logo on the paychecks? The overarching parent company's 24 decision? 25 A. I'm -- I'm not aware of who would make a</p>
<p style="text-align: right;">Page 39</p> <p>1 know. 2 Does DaVita require its logo to appear on the 3 paychecks issued to the employees of Total Renal Care or 4 any of DaVita's subsidiaries? 5 A. Yeah, I -- it's not required. We -- we do 6 that. 7 Q. And that's what I want to ask you about. I 8 heard that before, and I find that curious. But the 9 logo is on all of the employees' paychecks, is it not? 10 A. Yes, it is, sir. 11 Q. Well, what makes you think it's not required? 12 A. I'm not aware of there being any specific 13 requirement that that's actually included on the 14 paychecks; nor the stubs. I do know that as an 15 organization we do that. 16 Q. Well, you have centralized payroll; right? 17 A. That is correct. 18 Q. And who controls that centralized payroll? 19 DaVita? 20 A. What do you mean by "control"? 21 Q. Well, control. You know, I mean, control the 22 day-to-day operations of the centralized payroll. 23 A. I -- I don't know how I can be any more 24 specific about it. It's a centralized department that's 25 under DaVita Inc. They administer that for the</p>	<p style="text-align: right;">Page 41</p> <p>1 specific decision around that. But what I can tell you 2 is, that's our practice. 3 Q. I understand that, but you're not answering my 4 question. It's a really simple question. All right? 5 I'm going to go down and ask you about the lines of 6 control that an overarching parent corporation by the 7 name of DaVita asserts over the 30-something 8 subsidiaries that it wholly owns. All right? 9 And if you don't know, then fine. Then, 10 you're not -- you've been produced to answer something 11 you don't know. Then, I'd ask that you tell me that. 12 But I'd like a direct answer. 13 Who makes the decision, then, to put the logo 14 on the payroll checks? DaVita? 15 A. Sir, DaVita Inc. has made a decision to put 16 the logo on the checks that are produced to the 17 organization. 18 Q. And who did they require to put the logo on 19 the checks? Would that fall under Ms. Prockish's 20 directorship? 21 MS. PETERSEN: Object to the form. Compound. 22 A. Can you restate your question, please? 23 Q. (By Mr. Jones) Who would DaVita have required 24 to have done that? Would that have been Ms. Prockish? 25 A. Mr. Jones, I -- I believe the practice was in</p>

<p style="text-align: right;">Page 42</p> <p>1 place before Ms. Prockish was employed with the 2 organization. 3 Q. I'll ask a better question. Who would have 4 been required to put the logo on the paychecks? Would 5 that have been Ms. Prockish or someone in -- that 6 preceded her, that's in her same position of authority? 7 A. I -- I could -- I could not speak to a 8 specific individual or position that would make the 9 decision. Again, it is a practice that I believe has 10 been long-standing, with regards to a logo being placed 11 on the paycheck stubs. 12 Q. Mr. Eaves, when you were in grade school and 13 you took a true/false test, did you scribble in the 14 lines or did you check out true or false? 15 MS. PETERSEN: Objection. Argumentative. 16 Q. (By Mr. Jones) It's a legitimate question. 17 I'd like an answer. 18 MS. PETERSEN: Same objection. 19 A. Would you please restate the question? 20 Q. (By Mr. Jones) No. 21 MR. JONES: I'm going to ask you, though, 22 Madam Court Reporter, to read the question over again, 23 please. 24 (Record as shown on page 42, lines 12 through 25 14, read back.)</p>	<p style="text-align: right;">Page 44</p> <p>1 for me the highest executive in each of the 30-something 2 subsidiaries of Davita Inc., would the answer still be 3 the same, Javier Rodriguez? 4 A. That is correct. 5 Q. So the only way that the logo for Total Renal 6 Care could change is if, ultimately, Mr. Rodriguez 7 obtained the permission of Mr. Rodriguez to do it? Is 8 that a true or false statement? 9 A. I think the statement would be false, because 10 again it's not required. So I -- I believe that there 11 could probably be a decision that's potentially made by 12 another party. I just don't -- I'm not sure what the 13 logo would have to do with it in that situation. 14 I just don't think there's a formality 15 associated with it, to the extent this line of questions 16 is -- is -- is going down. This -- this is our logo 17 that appears in the upper left-hand corner of our pay 18 stubs. That's the extent of it. 19 MR. JONES: Christina, I want you to take 20 these topics down, or tell me how to make this thing 21 bigger on my screen, if you know -- oh, thank you. 22 Q. (By Mr. Jones) And if you need them back up, 23 Mr. Eaves, we're not hiding anything from you. But you 24 just tell me. All right. On my screen, when we do 25 this, I can see you better; I communicate better.</p>
<p style="text-align: right;">Page 43</p> <p>1 MS. PETERSEN: Objection still stands, and 2 outside the bounds of the topics for which the witness 3 has been designated to testify. 4 Q. (By Mr. Jones) I'd like an answer, Mr. Eaves. 5 A. Sir, if the exercise was true or false, and I 6 reflect back on my behavior in grade school, I believe I 7 would have checked true or false. 8 Q. This is a true or false question. DaVita Inc. 9 requires that its logo be placed on the paycheck of all 10 of the employees of TRC or its subsidiaries, true or 11 false? 12 A. It is false. It is not a requirement we do 13 it. 14 Q. Okay. Now, Mr. Eaves, what is the person of 15 highest executive authority in Total Renal Care? 16 A. Within the legal entity, Total Renal Care, it 17 would still roll up to our chief executive officer, 18 Javier Rodriguez. 19 Q. Say it again, please? 20 A. Javier Rodriguez. 21 Q. And who is the most -- who is the top 22 executive officer in DaVita Inc.? 23 A. My answer remains the same. That would be 24 Javier Rodriguez. 25 Q. And if I were to ask you to go down and name</p>	<p style="text-align: right;">Page 45</p> <p>1 Now -- 2 MS. HENRY: Craig, would you like to introduce 3 that exhibit into the record? 4 MR. JONES: I thought we had. Hadn't we done 5 18? Isn't that 18? 6 Olivia, have you introduced 18 and 17 into the 7 record? 8 THE COURT REPORTER: Yes. 9 MS. HENRY: Thank you. 10 Q. (By Mr. Jones) Now, which of the subsidiaries 11 of DaVita -- I'm talking about from the period of 12 January 1, 2017, to the present -- have their non-exempt 13 employees acknowledge that they're expected to read, 14 understand, and adhere to the DaVita Teammate Policies, 15 Code of Conduct, and Compliance Program? 16 A. Mr. Jones, can you repeat it? And I'm most 17 specifically interested in the dates you covered. 18 Q. Okay. If you'd look at number 3 on the 19 notice. Do you see this -- I'm not a hide-the-ball 20 lawyer. I sent you the questions in writing, Mr. Eaves. 21 Okay? 22 A. Okay. 23 Q. All right. Let's look at number 3. 24 A. Okay. 25 Q. There are two questions there. I'm going to</p>

<p style="text-align: right;">Page 46</p> <p>1 break it down into two.</p> <p>2 First of all, true or false, all of the</p> <p>3 subsidiaries of DaVita -- from January 1, 2017, to the</p> <p>4 present -- have their non-exempt employees acknowledge</p> <p>5 that they are expected to read, understand, and adhere</p> <p>6 to the DaVita's Teammate Policies, Code of Conduct,</p> <p>7 and/or Compliance Program?</p> <p>8 Is that true or false?</p> <p>9 A. That is true.</p> <p>10 Q. Why is this done?</p> <p>11 A. The reason we ask for all of our teammates,</p> <p>12 not just the non-exempt, to read and acknowledge that is</p> <p>13 to make sure that they understand general guidelines to</p> <p>14 be successful in their roles. And I also -- the company</p> <p>15 also thinks it's important for them to understand</p> <p>16 resources that are available to them.</p> <p>17 And so we ask that they read that, that they</p> <p>18 acknowledge that they understand that, that they know</p> <p>19 where to go if they've got questions. And the signature</p> <p>20 would indicate that they have acknowledged all of those</p> <p>21 to be the case.</p> <p>22 Q. Well, I'm going to ask the same question about</p> <p>23 the Teammate Policies updates. Do all the subsidiaries</p> <p>24 require their employees to read and be familiar with and</p> <p>25 understand Teammate Policies updates?</p>	<p style="text-align: right;">Page 48</p> <p>1 DaVita or DaVita subsidiaries -- for the period</p> <p>2 January 1, 2017, to the present -- for failure to adhere</p> <p>3 to DaVita's Teammate Policies, Code of Conduct, or</p> <p>4 Compliance Program?</p> <p>5 A. Yes, there could be consequences for failure</p> <p>6 to comply. That is correct.</p> <p>7 Q. Why?</p> <p>8 A. I'm sorry?</p> <p>9 Q. Why are there consequences, if the teammate</p> <p>10 failed to comply?</p> <p>11 A. Yeah. Quite -- quite simply, the policies</p> <p>12 handbook provides guidelines and expectations that we</p> <p>13 would have of our teammates. And if they -- they veer</p> <p>14 from those and it causes problems or breaks a policy,</p> <p>15 there could potentially even be a violation of law.</p> <p>16 We would want to address those to make sure</p> <p>17 that we're course-correcting the teammate, making sure</p> <p>18 that they're clear on our expectations, and also putting</p> <p>19 something in place potentially to ensure the same thing</p> <p>20 does not happen again.</p> <p>21 Q. So are you familiar with the definition of the</p> <p>22 term "required," Mr. Eaves?</p> <p>23 A. I'm familiar with the term "required."</p> <p>24 Q. You know, there's a West Coast term that I'm</p> <p>25 very fond of. And it is to refer to the word "ask" in a</p>
<p style="text-align: right;">Page 47</p> <p>1 A. On an annual basis, we ask all of our</p> <p>2 teammates to go in and review those and sign, just as I</p> <p>3 had previously explained.</p> <p>4 Q. So you were scribbling in the lines again,</p> <p>5 Mr. Eaves. I'm going to ask the court reporter to read</p> <p>6 that back over. Could we get a yes or no answer,</p> <p>7 please?</p> <p>8 MR. JONES: Madam Court Reporter, would you</p> <p>9 read that question back, please?</p> <p>10 (Record as shown on page 46, lines 22 through</p> <p>11 25, read back.)</p> <p>12 A. Okay. So your nuance there is the updates.</p> <p>13 We would not have them sign for every update that occurs</p> <p>14 in our Teammate Policy handbook. Does that answer your</p> <p>15 question more specifically, Mr. Jones, without</p> <p>16 scribbling between the lines?</p> <p>17 Q. (By Mr. Jones) So the answer to the question</p> <p>18 is that the employee -- well, you see, the question is</p> <p>19 more general than that. The question asks you -- well,</p> <p>20 let me just ask you straight up.</p> <p>21 Are all the employees of the subsidiaries</p> <p>22 required to annually acknowledge that they have read the</p> <p>23 Teammate Policies updates?</p> <p>24 A. Yes, that is correct.</p> <p>25 Q. Now, are there consequences to an employee of</p>	<p style="text-align: right;">Page 49</p> <p>1 non-transitive way, such as -- the ask here is, blank.</p> <p>2 Do we understand each other? Have you heard</p> <p>3 the phrase used in that -- the term used in that way?</p> <p>4 A. I'm unclear of what you're saying, Mr. Jones.</p> <p>5 Q. Well, you know, if I were to say, "Look, the</p> <p>6 ask here is, I want you to talk to me about whether</p> <p>7 DaVita is a corporation or not." Would you understand</p> <p>8 my question?</p> <p>9 A. Yes, of course.</p> <p>10 Q. You would understand how I'm using the verb</p> <p>11 "ask," correct?</p> <p>12 A. Yes.</p> <p>13 Q. Now, Merriam-Webster's defines "require" as to</p> <p>14 claim or ask for by right and authority.</p> <p>15 Does DaVita have the right and authority to</p> <p>16 ask that its logo be placed on all of the paychecks</p> <p>17 issued to its employees or the employees of the</p> <p>18 subsidiaries?</p> <p>19 A. Sir, I don't know that there is a regulation</p> <p>20 or a -- a definition somewhere in the corporate world</p> <p>21 that would make that a requirement, that we could</p> <p>22 formally ask of that.</p> <p>23 What I can tell you, though -- and I -- I'm</p> <p>24 sorry if I'm getting this unclear -- it is a practice</p> <p>25 that we do from a DaVita Inc. standpoint on down. And</p>

<p style="text-align: right;">Page 50</p> <p>1 it is the same, regardless of the subsidiary that 2 someone happens to sit into, from a legal entity 3 purpose. 4 Q. Now, do all of DaVita's subsidiaries have 5 access and make use of the DaVita intranet, VillageWeb? 6 A. Yes. All -- all DaVita teammates that sit 7 under the DaVita Inc. umbrella, which would be all the 8 subsidiaries we discussed, would have access to our 9 VillageWeb or the intranet. Yes. 10 Q. And why is that? 11 A. It's a central repository of information that 12 allows people to have information necessary to conduct 13 their job, understand resources or benefits that are 14 available to them. 15 Q. Okay. And it is a method of command and 16 control, is it not? 17 A. It's a method of -- I'm sorry? 18 Q. Sure. The -- let's go to the -- I want to 19 talk about three documents that are rather -- let's 20 refer to just documents. I want to talk about Teammates 21 Policies, Teammate Code of Conduct, and Teammate 22 Compliance Program. I'm going to speak to them -- all 23 three. 24 Those programs are a method of command and 25 control, are they not?</p>	<p style="text-align: right;">Page 52</p> <p>1 isn't that true? 2 A. I -- I don't know that those are the exact 3 words, but we do have a policy that addresses harassment 4 in the workplace. 5 Q. You didn't answer my question. I would like a 6 direct answer to it. 7 MR. JONES: Madam Court Reporter, would you 8 read it back, please? 9 (Record as shown on page 51, lines 23 through 10 25, and page 52, line 1, read back.) 11 A. Yes, I believe our policies would ask or have 12 the expectation that our teammates not harass others, 13 but -- but the problem with -- with the question of 14 wanting me to give you a yes or no answer is that a 15 teammate might not know that. And so an example might 16 be a teammate who asks another team out -- teammate out. 17 The teammate says no on the first occasion. 18 They're told, "Stop. That made me uncomfortable." And 19 two weeks later they say, "You know what, you sure? 20 We -- we talked a couple more times. Would you like to 21 do that again?" They might not understand that that 22 could fall under the definition of harassment. 23 And so back to my point, on a case-by-case 24 basis, we would refer to that document to explain what 25 the infraction was. And then we would provide guidance</p>
<p style="text-align: right;">Page 51</p> <p>1 MS. PETERSEN: Object to form. Vague as to 2 command and control. 3 A. Mr. Jones, I would say that that's information 4 available, as I mentioned before, that kind of gives 5 general guidelines and outlines resources available to 6 our teammates. I -- I do not agree with the words 7 "command and control." These are not documents intended 8 to be authoritarian, with no flexibility. These are -- 9 These are guidelines, programs, resources that 10 are available as needed. And I would need to understand 11 specific situations to -- to better talk about that. 12 But I do not -- I disagree that their documents are 13 command and control. 14 Q. (By Mr. Jones) Well, your employees are told 15 not to sexually harass their co-employees, are they not? 16 A. Which is an expectation of law. So we have 17 captured that in there appropriately. 18 Q. Yeah, but -- so you want to talk about the 19 law. I want to talk about what the policies and 20 procedures say. Now, I would like a clean answer to 21 that, if you don't mind. 22 A. Please restate your -- 23 Q. Your -- DaVita's policies say that it's -- 24 that DaVita employees and the employees of its 25 subsidiaries shall not sexually harass another employee;</p>	<p style="text-align: right;">Page 53</p> <p>1 about our expectations. And it may or may not, 2 depending upon the situation, require some type of 3 disciplinary action. I just -- I want to make sure the 4 full context is there. 5 Q. (By Mr. Jones) Mr. Eaves, it is DaVita's 6 position that its rules and regulations -- let's change 7 that. Start over. 8 It's DaVita's position that its sexual 9 harassment policy will be followed by its employees and 10 the employees of its subsidiaries. Is that true or 11 false? 12 A. True. 13 Q. That is not a suggestion, is it? 14 A. It is not a suggestion. It would be an 15 expectation. 16 Q. It is a -- it is a directive that is issued 17 from a position of authority by DaVita; am I correct? 18 A. I'm sorry. Can you just -- 19 Q. It's a -- I'll restate. 20 It is a directive issued to the employees by 21 DaVita from a position of authority, true? 22 A. It is a directive around the expectation, yes. 23 Q. That's what I mean by command and control. 24 Now, tell me about this. What do you know 25 about pay -- or do you know about pay practices of the</p>

<p style="text-align: right;">Page 54</p> <p>1 subsidiaries of DaVita?</p> <p>2 A. Yes, Mr. Jones, I can speak to this.</p> <p>3 Q. Do you know what I mean by pay practices?</p> <p>4 A. Generally. And I promise, if you get too</p> <p>5 specific, I'll let you know. But I feel like I can</p> <p>6 speak to it.</p> <p>7 Q. I suspect you will, Mr. Eaves.</p> <p>8 By pay practices, I'm not just talking about</p> <p>9 payroll practices. I mean, pay practices involve what</p> <p>10 you pay employees. That's how I use the term. Payroll</p> <p>11 refers to how you physically get the money to them. Can</p> <p>12 we understand each other?</p> <p>13 A. Yes, I follow you.</p> <p>14 Q. Now, does DaVita have a uniform pay practices</p> <p>15 that it applies to its subsidiaries?</p> <p>16 A. Can you just help me understand what you mean</p> <p>17 by "uniform"?</p> <p>18 Q. Yeah. I mean, does DaVita have -- treat any</p> <p>19 of the nonqualified employees of one subsidiary, in</p> <p>20 terms of pay practices, different than they do from</p> <p>21 another subsidiary, if those two people are doing the</p> <p>22 same work?</p> <p>23 A. No, there's -- there's no difference in pay</p> <p>24 practice, depending on which subsidiary you sit in.</p> <p>25 Q. I know people are paid different amounts.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. (By Mr. Jones) Have you seen this document</p> <p>2 before?</p> <p>3 And you see on the bottom right-hand corner,</p> <p>4 Mr. Eaves -- you will see TRC 000144. Let me tell you</p> <p>5 what that is. That is referred to, you know,</p> <p>6 euphemistically, frankly, as a Bates stamp because in</p> <p>7 the -- you know, old-timers like me, we used to have</p> <p>8 these machines. You'd have to Bates stamp each</p> <p>9 individual document?</p> <p>10 We'd have somebody stamp -- sound like a young</p> <p>11 war going off in your office. You'd have people</p> <p>12 stamping all the time. And you would get there, and you</p> <p>13 would Bates -- used to make the stamp. And when you</p> <p>14 push it down, it would say 501. And we pulled it up, it</p> <p>15 would switch -- it had a rotor -- and it switched to 2.</p> <p>16 Okay?</p> <p>17 So we refer to that as a Bates stamp. Can we</p> <p>18 understand each other, when I say that?</p> <p>19 A. Yeah. Mr. Jones, I follow you, yes.</p> <p>20 Q. Thank you so much. Now, we look down here.</p> <p>21 And the Bates stamp says TRC 000144. That means Total</p> <p>22 Renal Care. And that was produced by TRC, who's the</p> <p>23 named defendant in this case. Okay?</p> <p>24 So I don't want to get hung up. When I ask</p> <p>25 you if you've seen this document before, you go down and</p>
<p style="text-align: right;">Page 55</p> <p>1 That's not what I'm talking about. I get that. I mean,</p> <p>2 if you're on the West Coast, the cost of living is so</p> <p>3 much higher than if you're in the South or even in the</p> <p>4 Upper Midwest. Right? So I get that.</p> <p>5 But in terms of pay practices -- and let's</p> <p>6 talk about overtime practice -- no, let's talk about --</p> <p>7 strike -- we'll come to that in a minute.</p> <p>8 Is DaVita's Code of Conduct applied uniformly</p> <p>9 across its affiliates?</p> <p>10 A. Yes, it is.</p> <p>11 Q. Are the Teammate Policies applied uniformly</p> <p>12 across DaVita's affiliates?</p> <p>13 A. Yes.</p> <p>14 Q. And are the -- is DaVita's Compliance Program</p> <p>15 applied uniformly across its affiliates?</p> <p>16 A. Yes.</p> <p>17 Q. Now, I would like to --</p> <p>18 MR. JONES: If we could, Christina, put up on</p> <p>19 the board TRC 000145, please.</p> <p>20 MS. HENRY: Okay.</p> <p>21 MR. JONES: 145. That's Exhibit 5, Christina.</p> <p>22 MS. HENRY: So it's not the new stuff. Okay.</p> <p>23 Exhibit 5. Sorry.</p> <p>24 MR. JONES: Let's start with 144, Christina.</p> <p>25 All right.</p>	<p style="text-align: right;">Page 57</p> <p>1 you go, "Oh, I haven't seen that little thing in the</p> <p>2 bottom right there." All these documents are going to</p> <p>3 have a Bates stamp, and that's not original to the</p> <p>4 document. Okay?</p> <p>5 Are you familiar with the document that we put</p> <p>6 on the Zoom board as TRC 000144?</p> <p>7 A. I am.</p> <p>8 Q. Okay. There is a -- in the Teammates hand- --</p> <p>9 A. Mr. Jones, just a quick clarification. Is --</p> <p>10 is the entirety of this document Bates stamped 000144,</p> <p>11 or is it just this specific --</p> <p>12 Q. No, no, no.</p> <p>13 A. -- page?</p> <p>14 Q. Right. No, it starts at 0001.</p> <p>15 A. Okay.</p> <p>16 Q. And let's stop right here, so we can give you</p> <p>17 a reference. You look right here, you see "Teammate</p> <p>18 Policies"?</p> <p>19 A. Yes.</p> <p>20 Q. This is the one effective January 1, 2020,</p> <p>21 'cause we -- we now have looked at these documents. We</p> <p>22 know they've changed.</p> <p>23 A. Sure.</p> <p>24 Q. I don't want you to think I'm trying to fool</p> <p>25 you here. So we're talking about the Teammate Policies</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 effective January 1, 2020. The Teammate Policies --</p> <p>2 what do you call this?</p> <p>3 Do people refer to it as a handbook or manual,</p> <p>4 or just Teammate Policies? How is it referred to, so</p> <p>5 that you and I -- I don't have to every time say</p> <p>6 Teammate Policies effective January 1, 2020?</p> <p>7 A. Let's just call it a handbook.</p> <p>8 Q. Perfect. Okay. We're going to -- I may slip</p> <p>9 back and -- old habit -- call it Teammate Policies. If</p> <p>10 I do that, we understand we're talking about the same</p> <p>11 thing. Okay?</p> <p>12 A. I'm following you.</p> <p>13 MR. JONES: All right. Let's go to 144,</p> <p>14 Christina, please.</p> <p>15 Q. (By Mr. Jones) Now, there are sections in the</p> <p>16 handbook that -- one of the sections, though -- I think</p> <p>17 the last section is "Teammate Acknowledgment." Are you</p> <p>18 familiar with the organization of the handbook?</p> <p>19 A. I am familiar with the organization.</p> <p>20 Q. Okay. Give me just a second here, Mr. Eaves.</p> <p>21 MR. JONES: Now let's go, Christina, to the</p> <p>22 next page, 145 -- 144 -- 145. You went too far. Okay.</p> <p>23 I see.</p> <p>24 Q. (By Mr. Jones) So there are basically three</p> <p>25 parts to the Teammate Acknowledgment of this handbook --</p>	<p style="text-align: right;">Page 60</p> <p>1 just want to make sure I'm fully familiar with this.</p> <p>2 THE WITNESS: Thank you, Ms. Henry. You can</p> <p>3 go back.</p> <p>4 Q. (By Mr. Jones) All right. Now, this is what</p> <p>5 the acknowledgment says. It says, "As a DaVita</p> <p>6 teammate, I understand I am expected to read, understand</p> <p>7 and adhere to our Company's policies."</p> <p>8 What does DaVita mean by "adhere to company</p> <p>9 policies"?</p> <p>10 A. That you would follow the policies and</p> <p>11 expectations that have been outlined in the document.</p> <p>12 Q. Merriam-Webster defines "adhere" to mean to</p> <p>13 bind oneself to observance.</p> <p>14 Would that be a fair definition of the word</p> <p>15 "adhere," as it is used in the Teammate Acknowledgment</p> <p>16 as found at TRC 000146?</p> <p>17 A. So Mr. Jones, when you said the last part of</p> <p>18 that definition, you're leaning back in your seat. And</p> <p>19 I'm having trouble hearing you through the microphone.</p> <p>20 I'm sorry.</p> <p>21 Q. No problem. I'll start over.</p> <p>22 Merriam-Webster defines the word "adhere" to</p> <p>23 mean to bind oneself to observance. Would that be a</p> <p>24 fair definition of the word "adhere," as it is used by</p> <p>25 DaVita in the Teammate Acknowledgment that is found on</p>
<p style="text-align: right;">Page 59</p> <p>1 Teammate Acknowledgment, Teammate Compliance Statement,</p> <p>2 Teammate Property Responsibility Statement. Are you</p> <p>3 familiar with those three sections?</p> <p>4 A. I am.</p> <p>5 MR. JONES: Next page, please, Christina.</p> <p>6 Q. (By Mr. Jones) This is 000146, and it -- my</p> <p>7 understanding is that this Teammate Acknowledgment is</p> <p>8 from -- the subsidiary's employees are required to sign</p> <p>9 this acknowledgment or some pretty close form of this</p> <p>10 acknowledgment; am I correct?</p> <p>11 A. We do ask that they electronically acknowledge</p> <p>12 these, yes, that is correct.</p> <p>13 Q. How often must the teammates electronically</p> <p>14 acknowledge that they're familiar with the Teammate</p> <p>15 Policies?</p> <p>16 A. Annually. Once a year.</p> <p>17 Q. One more time?</p> <p>18 A. Annually. Once a year.</p> <p>19 Q. Now, let's go through this because you are</p> <p>20 familiar with this acknowledgment; correct?</p> <p>21 A. I am. But I -- if I could just ask</p> <p>22 Ms. Henry -- because I -- I think there were three</p> <p>23 sections on 145. Okay. So the next document, 146, that</p> <p>24 I'm looking at shows the Acknowledgment; the Compliance</p> <p>25 Statement. Can I just see the Property Statement? I</p>	<p style="text-align: right;">Page 61</p> <p>1 TRC 000146?</p> <p>2 A. I think that's fair. I'm not going to</p> <p>3 disagree with Merriam-Webster.</p> <p>4 Q. The next sentence says, "I will familiarize</p> <p>5 myself with the materials in the Teammate Policies, the</p> <p>6 Code of Conduct and the DaVita Compliance Program, as</p> <p>7 well as any changes to them." That commitment is -- let</p> <p>8 me start over.</p> <p>9 Each teammate is required to acknowledge that</p> <p>10 commitment annually; is that true?</p> <p>11 A. That's true.</p> <p>12 Q. I'm going to -- the next sentence says that,</p> <p>13 "I understand that these policies and programs can be</p> <p>14 found on DaVita's VillageWeb and People Services Page."</p> <p>15 Not only can the policies be found on</p> <p>16 VillageWeb and People Services Page, any changes to the</p> <p>17 policies can be found there; is that true?</p> <p>18 A. On the VillageWeb and People Services Page,</p> <p>19 yes, that is true.</p> <p>20 Q. Now, I want to skip the next sentence, and I</p> <p>21 want to go to the one right after that. Here's how it</p> <p>22 reads, "I understand that I am governed by the contents</p> <p>23 of the Teammate Policies, the Code of Conduct and the</p> <p>24 DaVita Compliance Program, and I recognize that DaVita</p> <p>25 reserves the right to interpret, amend, modify,</p>

16 (Pages 58 to 61)

<p style="text-align: right;">Page 62</p> <p>1 supersede or eliminate policies, practices, or benefits 2 (except employment-at-will policies) described in these 3 policies from time-to-time in its sole and absolute 4 discretion." 5 Now, let's unpack that. That's a lot. All 6 right? The teammate has to acknowledge that the 7 teammate is governed by the contents of the Teammate 8 Policies and Code of Conduct and the DaVita Compliance 9 Program. That is what each teammate is required to 10 acknowledge; is that true? 11 A. That is correct. 12 Q. What does DaVita mean by the teammate 13 acknowledging that the teammate understands that he or 14 she is governed by the contents of the Teammate Policies 15 and Code of Conduct and the DaVita Compliance Program? 16 A. I'm not sure I understand your question. 17 Q. What does DaVita -- did DaVita mean, when it 18 used the word "govern" in that sentence that I just read 19 to you? 20 A. Guided. 21 Q. Does it mean anything else? 22 A. My answer remains guided. I -- I can't think 23 of another word off the top of my head that comes to 24 mind. 25 Q. Okay. See, the word "guided" -- again, going</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Okay. And the -- and these are words that are 2 in DaVita's Teammate Policies, their handbook; right? 3 A. That is correct. 4 Q. The Teammate Policies and handbook is not a 5 law book, is it? 6 A. It is not. 7 Q. And so, sir -- but that word "at-will 8 employment" is used in this document, right? 9 A. It is. 10 Q. I want to know what DaVita means, when it 11 says -- when it tells its employees, "You're an at-will 12 employee"? 13 MS. PETERSEN: Objection. That's outside the 14 scope of the topics for which this witness has been 15 designated. 16 You can answer in your personal capacity. 17 MR. JONES: No, no indeed. It is right in the 18 middle -- right exactly in the middle of the topic. 19 MS. PETERSEN: To which topic -- 20 MR. JONES: You can go look at any one of 21 them. You can go to 17. 22 MS. PETERSEN: Which -- 23 MR. JONES: I specifically -- I specifically 24 mentioned these documents in -- hang on -- in topic -- 25 MS. HENRY: I think he means 18.</p>
<p style="text-align: right;">Page 63</p> <p>1 to Merriam-Webster -- is different than "governed." The 2 word "guided" means to lead or direct. The word 3 "governed" means to lead or direct from a position of 4 authority. 5 Now, did DaVita mean, by the word "governed," 6 that they wanted to guide or direct their employees from 7 a position of authority? 8 A. I think that this would be a position of -- 9 I -- I have problems with the word "authority," because 10 I think governed and government can mean a couple of 11 things. It's -- you're provided with leadership or 12 guidance. 13 Q. Well, here's the thing, Mr. Eaves. We're all 14 thinking people here. Okay? The last bastion of pure 15 authoritative power is the American corporation. And 16 let me illustrate what I'm talking about. Everywhere I 17 turn in these policies, I see references to at-will 18 employment. 19 What does DaVita mean by at-will employment? 20 MS. PETERSEN: Objection, to the extent that 21 calls for a legal conclusion. 22 You can go ahead. 23 Q. (By Mr. Jones) Let me make this very clear. 24 You're not a lawyer, are you? 25 A. I am not a lawyer.</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. JONES: Thank you. 2 MS. PETERSEN: Topic 18, which relates to 3 emergency time frame? 4 MR. JONES: No. 17, 1-7. 5 MS. PETERSEN: 17(i) relates to the creation 6 of the Disaster Relief Policy? 7 MR. JONES: Let me take you to 4, then, which 8 asks, "... regarding which Subsidiaries require their 9 non-exempt employees during the January 1, 2017, through 10 the present to make, sign, adopt or somehow confirm the 11 'Teammate Acknowledgment' found at TRC 000145-000147 or 12 an acknowledgment similar to that 'Teammate 13 Acknowledgment' and why." 14 MS. PETERSEN: I'm reading that. I see 15 nothing related to an assessment of what did DaVita mean 16 by at-will employment in the teammate handbook. 17 MR. JONES: Well, I'm going to understand -- 18 the question is going to stand. You can tell him not to 19 answer, if you'd like. But either way, I'd like him 20 to answer. 21 MS. PETERSEN: Oh, I'm not going to instruct 22 him not to answer. I'm just saying that's not a topic 23 for which he's been designated. 24 So Mr. Eaves, you can answer in your -- based 25 on your personal knowledge.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 Q. (By Mr. Jones) Well, Mr. Eaves, do you 2 know -- let me ask you a different question. All right? 3 Do you know what DaVita means as -- when it 4 uses the term "at-will employment" in its handbook? I'm 5 asking you what -- your corporate knowledge here. 6 MS. PETERSEN: And same objection. 7 MR. JONES: It's noted. 8 A. My personal understanding of at-will 9 employment -- 10 Q. (By Mr. Jones) I'm not asking you, personal 11 understanding. I'm asking for DaVita's understanding of 12 what at-will employment means? 13 A. I -- 14 MS. PETERSEN: Again, Counsel, my objection 15 does still stand. This is a topic which is outside the 16 areas of designated testimony. He is absolutely welcome 17 to testify as to his personal knowledge. 18 MR. JONES: Listen, you're directing the 19 witness not -- to avoid my question. And I'm making a 20 note of that, Ms. Petersen. And I'm reaching the end of 21 my patience. I want to know -- if I ask him a very 22 simple question, I would like a very simple answer. 23 Q. (By Mr. Jones) Mr. Eaves, you know why -- 24 what DaVita means when it says at-will employment in its 25 acknowledgment, don't you?</p>	<p style="text-align: right;">Page 68</p> <p>1 personal capacity. 2 MR. JONES: You're instructing him not to 3 answer as a corporate representative, yes or no? 4 MS. PETERSEN: Counsel, if you can point me to 5 the topic that addresses this, I -- 6 MR. JONES: I'm not arguing with you. I just 7 need a straight answer. Are you instructing him not to 8 answer that question as a corporate representative, yes 9 or no? 10 MS. PETERSEN: Yes. 11 Q. (By Mr. Jones) Mr. Eaves, are you refusing to 12 answer my question as a corporate representative of 13 DaVita -- 14 A. I will take -- 15 Q. -- yes or no? 16 A. Yes, I will take guidance from my counsel. 17 Q. All right. That was my next question. You're 18 doing so because of instruction of Counsel, correct? 19 A. That is correct. 20 Q. Now -- 21 MS. PETERSEN: Mr. Jones, again, I'm -- if we 22 can talk about -- 23 MR. JONES: I don't care to -- I don't care to 24 have this -- no, Ms. Petersen, I really don't. I'm 25 trying to ask another question. Okay? We've moved on.</p>
<p style="text-align: right;">Page 67</p> <p>1 MS. PETERSEN: Same objection. 2 A. I understand at-will employment, yes, 3 Mr. Jones. 4 Q. (By Mr. Jones) All right. Tell me, what did 5 DaVita mean by at-will employment when it put it in the 6 acknowledgment? 7 MS. PETERSEN: Excuse me. In the 8 acknowledgment? 9 MR. JONES: Yeah. 10 MS. PETERSEN: Did I mishear? 11 MR. JONES: No, you didn't miss it. In the 12 acknowledgment. It's in the acknowledgment. 13 MS. PETERSEN: I'm sorry. I think you broke 14 up, at least on my end. Do you mind repeating? 15 MR. JONES: I'll ask it again. 16 Well, Christina, let's keep it right there. 17 Okay. Making me dizzy. 18 Madam Court Reporter, did you hear the 19 question? 20 THE COURT REPORTER: Yes. 21 MR. JONES: Would you read it back, please? 22 (Record as shown on page 67, lines 4 through 23 6, read back.) 24 MS. PETERSEN: Same objection. It's outside 25 the scope of the topics. The witness may answer in his</p>	<p style="text-align: right;">Page 69</p> <p>1 THE WITNESS: Mr. Jones, may I ask you a 2 question? I'm about ready for a bio break. And so if 3 we can -- 4 MR. JONES: You can get a comfort break any 5 time, Mr. Eaves. 6 THE WITNESS: I -- could I have one, please? 7 That would be great. I think -- 8 MR. JONES: Sure, absolutely. 9 THE WITNESS: -- I could use the restroom. Do 10 I just come back when I'm ready, or do we break? 11 MR. JONES: Yeah. 12 THE WITNESS: Come back at -- 13 MR. JONES: We -- you'll come back. We trust 14 you, Mr. Eaves. 15 THE WITNESS: I'll be right back. Thank you 16 so much. 17 (Recess taken from 2:26 p.m. to 2:34 p.m.) 18 Q. (By Mr. Jones) All right. Let's go to -- 19 MR. JONES: Are we back on? Madam Court 20 Reporter, I don't mean to -- we're back on? 21 THE COURT REPORTER: We're back on. 22 MR. JONES: All right. 23 Q. (By Mr. Jones) We'll go back to TRC 000146. 24 Now, I want to skip down a little bit. And the last -- 25 in the first column on the left at the bottom, there's a</p>

<p style="text-align: right;">Page 70</p> <p>1 sentence that starts with, "I understand that ..."</p> <p>2 Do you see the line I'm talking about?</p> <p>3 A. At present there's nothing projected. I'll</p> <p>4 let you know when I see something.</p> <p>5 Q. There we go. Okay. Do you see the last</p> <p>6 sentence on the column on the left? It starts with, "I</p> <p>7 understand ..."</p> <p>8 A. Yes, I see that.</p> <p>9 Q. Would you read it out loud for us, please?</p> <p>10 A. "I understand that the Teammate Policies, the</p> <p>11 Code of Conduct and the DaVita Compliance Program and</p> <p>12 their contents are not intended to create any</p> <p>13 contractual or legal obligations, express or implied,</p> <p>14 between DaVita and its teammates; however, these</p> <p>15 policies do set forth the entire employment arrangement</p> <p>16 between me and DaVita with respect to the at-will nature</p> <p>17 of my employment relationship with DaVita."</p> <p>18 Q. Why does DaVita have its subsidiaries have</p> <p>19 their employees sign an acknowledgment with that</p> <p>20 sentence in it?</p> <p>21 A. The entirety of the sentence, or is there a</p> <p>22 specific area you want me to comment on?</p> <p>23 Q. Well, yeah, I mean, if you want to break it</p> <p>24 down -- it's a broad question.</p> <p>25 Why does DaVita have its affiliates have their</p>	<p style="text-align: right;">Page 72</p> <p>1 MS. PETERSEN: Objection. Outside the scope</p> <p>2 of the topics for which this witness is here to testify.</p> <p>3 Q. (By Mr. Jones) You can answer my question.</p> <p>4 MS. PETERSEN: Counsel, my objection still</p> <p>5 stands. If the question -- well, if you want to read</p> <p>6 back the question, we can all be clear on it. I'm happy</p> <p>7 to -- happy to consider it.</p> <p>8 MR. JONES: Sure.</p> <p>9 Madam Court Reporter, would you read it back,</p> <p>10 please?</p> <p>11 (Record as shown on page 71, lines 23 through</p> <p>12 25, read back.)</p> <p>13 MR. JONES: I'll clean that up.</p> <p>14 Q. (By Mr. Jones) Does DaVita have its employees</p> <p>15 sign off on the acknowledgment that indicates that the</p> <p>16 Teammate Policies and Code of Conduct and the DaVita</p> <p>17 Compliance Program and their contents are not intended</p> <p>18 to create any contract or legal obligations, express or</p> <p>19 implied, between Davita and its teammates because it</p> <p>20 wants the teammates to understand this is not an</p> <p>21 employment contract?</p> <p>22 A. Or legal document.</p> <p>23 Q. That's a yes?</p> <p>24 A. I would say that it's not a legal -- it's not</p> <p>25 a legal contract or obligation.</p>
<p style="text-align: right;">Page 71</p> <p>1 employees sign an acknowledgment that has that sentence</p> <p>2 in it?</p> <p>3 MS. PETERSEN: Object, to the extent that it</p> <p>4 calls for a legal conclusion.</p> <p>5 A. And, Mr. Jones, I'm not delaying. I want to</p> <p>6 re-read it again. If you can just give me a second.</p> <p>7 Q. (By Mr. Jones) Sure. I think I -- I</p> <p>8 understand the difficulty. There are actually two</p> <p>9 sentences there.</p> <p>10 A. You want me to comment on the first part of</p> <p>11 the semicolon, or the break after?</p> <p>12 Q. There you go. There you go. I think I</p> <p>13 understand the struggle, and I want to be fair about</p> <p>14 this. So I'm going to break the sentence in half.</p> <p>15 Okay? Why don't you read the first half of it, and then</p> <p>16 let's end with the semicolon.</p> <p>17 A. This is not an employment contract.</p> <p>18 Q. Why does DaVita have its affiliates' employees</p> <p>19 sign an acknowledgment with that statement in it?</p> <p>20 A. Because we don't want to have employment</p> <p>21 contracts. And we -- and we don't use this in standard</p> <p>22 practice at all.</p> <p>23 Q. Right. But you make the teammate sign off on</p> <p>24 that. Are you trying to tell the teammate this is not</p> <p>25 an employment contract?</p>	<p style="text-align: right;">Page 73</p> <p>1 MR. JONES: Okay. Why don't you read the</p> <p>2 question again, Ms. Court Reporter?</p> <p>3 (Record as shown on page 72, lines 14 through</p> <p>4 21, read back.)</p> <p>5 A. That's included in their -- yes, for that</p> <p>6 purpose.</p> <p>7 Q. (By Mr. Jones) Okay. Well, what does DaVita</p> <p>8 mean by employment contract?</p> <p>9 A. That there would be defined term associated</p> <p>10 with someone's employment with the organization.</p> <p>11 Q. Tell me more about that, please.</p> <p>12 MS. PETERSEN: Counsel, I have to object</p> <p>13 again. I want the witness to be able to provide</p> <p>14 testimony here, and yet at the same time each of these</p> <p>15 questions is outside the bounds of the topic list. If</p> <p>16 you can help point me to a specific topic, again we'll</p> <p>17 reconsider. But --</p> <p>18 MR. JONES: Let me just say, Ms. Petersen --</p> <p>19 you know this, too, and -- that's the last time I'm</p> <p>20 going to have this repartee on the record with you. You</p> <p>21 know as well as I do, I'm fairly allowed to drill down</p> <p>22 and -- you know, on these topics. And my topic was --</p> <p>23 we want -- is that -- is this -- is that we're asking</p> <p>24 why they have them sign off on those acknowledgments.</p> <p>25 That was a clear question. He said, "We don't</p>

<p style="text-align: right;">Page 74</p> <p>1 want employment contracts." Now, I can follow up on 2 that and find out why DaVita doesn't want employment 3 contracts, what they consider to be an employment 4 contract, what they consider not to be an employment 5 contract, what they consider to be employment at will. 6 I can do that, and you know I can do that. 7 And if -- you know, let me just tell you. This judge is 8 very user-friendly. If you don't think I can do it, 9 let's get him on the line. But I wish you would stop 10 interrupting me, because it's stopping the flow and it's 11 making this longer than it needs to be. 12 MS. PETERSEN: Counsel, I am certainly 13 permitted to make objections. And my objections -- 14 MR. JONES: (Unintelligible) objections. 15 MS. PETERSEN: May I finish my statement, 16 please? We can go off the record, if need be. The 17 concern is this is going to legal conclusions and 18 outside the bounds of the topics. Yes, I do agree there 19 can be some exploration in this area. 20 That's what I meant by saying -- you know, I 21 want to be -- the witness to be able to testify here, 22 and yet trying to keep to the bounds of corporate 23 testimony and what has been noticed as the topics. 24 Mr. Eaves, you can respond if you are able to 25 do so.</p>	<p style="text-align: right;">Page 76</p> <p>1 just used the word "employment at will" in an answer, as 2 a corporate representative of DaVita. And I am allowed 3 to ask him what he meant by using those words. And the 4 last answer, I did not -- those words were not in my 5 question; they were in his answer. And I get to explore 6 that. 7 Now, are you instructing him not to answer my 8 last question? 9 MS. PETERSEN: I am. Consistent with the 10 prior instruction, I am. 11 Q. (By Mr. Jones) Mr. Eaves, will you refuse to 12 answer my question? 13 A. Mr. Jones, I'll follow the advice of my 14 counsel. I won't answer the question on behalf of 15 DaVita. 16 Q. Thank you very much. Now, let's go to the 17 second half of this -- or of this sentence that we had 18 read. And it is after the semicolon, in the right-hand 19 column of TRC 000146. Please read those words, 20 beginning with "however." 21 THE WITNESS: Ms. Henry, can you just put that 22 down? I just want to make sure I'm looking at the -- 23 A. So you just want me to read the second half of 24 the semicolon sentence, sir? 25 Q. (By Mr. Jones) Yes, sir.</p>
<p style="text-align: right;">Page 75</p> <p>1 Q. (By Mr. Jones) Do you need to hear the 2 question again, sir? 3 A. Yes, Mr. Jones, I would, please. 4 MR. JONES: Ms. Court Reporter, would you read 5 the question back, please? 6 (Record as shown on page 73, lines 7, 8, and 7 11, read back.) 8 A. So, Mr. Jones, I -- I think -- what I'm trying 9 to explain here is that this in and of itself should not 10 be seen as an agreement that both DaVita and an employee 11 enters to as a contract around expectations and the 12 absolutes that you tend to want to describe these at. 13 I think that these are general guidelines and 14 outside of employment at will. These -- these are the 15 guidelines that we would expect for them to -- to follow 16 and adhere to. 17 Q. (By Mr. Jones) Right. So -- and I want to 18 follow up on that answer, you know. And it goes back to 19 where we started. What do you mean by employment at 20 will? 21 MS. PETERSEN: Objection. Outside the topics 22 for which this witness has been designated to testify. 23 He is the VP of people services, and can answer that 24 question in his personal capacity. 25 MR. JONES: I want an answer by DaVita. He</p>	<p style="text-align: right;">Page 77</p> <p>1 A. "... however, these policies do set forth the 2 entire employment arrangement between me and DaVita with 3 respect to the at-will nature of my employment 4 relationship with DaVita." 5 Q. Why does DaVita have the subsidiaries have 6 their employees sign an acknowledgment with that 7 sentence in it? 8 A. Because these are general guidelines that we 9 would like for a teammate to follow. And so absent us 10 asking them to go outside of the legal structure of 11 things, these would be our general expectations. 12 Q. Yeah. But that's not the words that are used 13 in that sentence. It says that the "policies set forth 14 the entire employment arrangement between me" -- being 15 the employee -- "and DaVita." Okay? 16 I mean, what is it about that clause that 17 DaVita is trying to get the employee to acknowledge? 18 A. So as I had mentioned, there are general 19 expectations that we have as an employer. And there 20 should be general expectations that teammates have with 21 regards to understanding their rights and resources that 22 are under this guidebook. 23 So we are saying, with respect to that, we -- 24 we are outlining that these would be the general 25 arrangement that we would have, absent us crossing any</p>

<p style="text-align: right;">Page 78</p> <p>1 guidelines about breaking the law or anything.</p> <p>2 Q. Yeah. Okay. So -- but they acknowledge this</p> <p>3 is the "entire employment arrangement between me and</p> <p>4 DaVita." I mean, what do they mean by that?</p> <p>5 MS. PETERSEN: Objection. We're in the same</p> <p>6 territory again here. Calls for a legal conclusion --</p> <p>7 MR. JONES: Yeah.</p> <p>8 MS. PETERSEN: -- eventually, and also outside</p> <p>9 the scope of the topic for which this witness has been</p> <p>10 designated to testify.</p> <p>11 MR. JONES: We will -- we will find out about</p> <p>12 that, because I've never in 35 years have someone</p> <p>13 instruct a witness not to answer questions about what</p> <p>14 the corporation meant when they made their employees</p> <p>15 acknowledge specific words and I ask them, "Well, what</p> <p>16 did you mean by those words?" You know, never. In 35</p> <p>17 years, I -- you know, for the life of me.</p> <p>18 These are fair questions, and they're fairly</p> <p>19 within the scope of this 30(b)(6). And I'm going to</p> <p>20 make as many -- I'm going to document the record as well</p> <p>21 as I can, because we're coming back. So if you're going</p> <p>22 to instruct him not to answer, then instruct him not to</p> <p>23 answer. I'm tired of all this jabbering back and forth.</p> <p>24 MS. PETERSEN: The witness may testify as a</p> <p>25 30(b)(1) witness, in his capacity. He is instructed not</p>	<p style="text-align: right;">Page 80</p> <p>1 speeding ticket?</p> <p>2 A. Yes, I think so.</p> <p>3 Q. What'd you get the ticket for?</p> <p>4 A. Speeding.</p> <p>5 Q. Okay. Is that a legal conclusion?</p> <p>6 A. (No response.)</p> <p>7 Q. No. It's -- you're using the term "speeding,"</p> <p>8 even though legal -- speeding is a legal term, right? I</p> <p>9 asked you that as a layperson, right? And so this is</p> <p>10 what I want to establish. Okay?</p> <p>11 First of all, again, remember I asked you</p> <p>12 earlier about your education. There was a reason for</p> <p>13 that. And I didn't hear anywhere in there where you</p> <p>14 went to law school. I am correct, you didn't go to law</p> <p>15 school; is that right?</p> <p>16 A. That's correct. I have not gone to law</p> <p>17 school.</p> <p>18 Q. And you're not a legal counsel for DaVita,</p> <p>19 correct?</p> <p>20 A. I'm not.</p> <p>21 Q. And you never had any formal legal training;</p> <p>22 is that correct?</p> <p>23 A. That is correct. I have not had legal</p> <p>24 training.</p> <p>25 Q. Okay. So, you know, when I ask you these</p>
<p style="text-align: right;">Page 79</p> <p>1 to answer as the 30(b)(6) witness, as this is outside</p> <p>2 the scope of the topics for which he's been designated</p> <p>3 to testify.</p> <p>4 Q. (By Mr. Jones) Do you refuse to answer as a</p> <p>5 corporate representative of DaVita, Mr. Eaves?</p> <p>6 A. Mr. Jones, I'll take direction from my legal</p> <p>7 counsel.</p> <p>8 Q. I understand that, but that's a yes or no</p> <p>9 question. I'm not trying to pick on you. I'm not</p> <p>10 trying to get you in any trouble. I'm just trying to</p> <p>11 establish that you understand the question and that you</p> <p>12 refuse to answer it as a corporate representative of</p> <p>13 DaVita, based upon advice of Counsel.</p> <p>14 Is my --</p> <p>15 A. Correct.</p> <p>16 Q. -- statement true?</p> <p>17 A. I will not answer the question as a corporate</p> <p>18 witness, based on the advice of my counsel.</p> <p>19 Q. Thank you.</p> <p>20 MS. PETERSEN: Counsel, can we go off the</p> <p>21 record for just one second -- side bar?</p> <p>22 MR. JONES: Sure.</p> <p>23 (Discussion held off the record.)</p> <p>24 MR. JONES: All right. Back on the record.</p> <p>25 Q. (By Mr. Jones) Mr. Eaves, you ever had a</p>	<p style="text-align: right;">Page 81</p> <p>1 questions about what you mean by -- you as a corporate</p> <p>2 representative of DaVita -- by employment at will, I'm</p> <p>3 not asking you as a lawyer. I'm not asking you for a</p> <p>4 legal opinion. So I want to go back to your answer that</p> <p>5 you gave.</p> <p>6 And do you remember when you gave that answer,</p> <p>7 and you used that term "employment at will"? Do you</p> <p>8 remember that?</p> <p>9 A. I'll have to be refreshed. It sounds like</p> <p>10 Ms. Pennella will refresh me on my answer.</p> <p>11 MR. JONES: Would you read the answer back,</p> <p>12 please?</p> <p>13 A. And -- and may I ask that Ms. Henry project</p> <p>14 the policy acknowledgment again?</p> <p>15 Q. (By Mr. Jones) Sure.</p> <p>16 A. And Mr. Jones, I'd ask that before the</p> <p>17 question be read back to me, I just have a chance to</p> <p>18 read it again. I would appreciate that very much.</p> <p>19 Q. Okay. Do you want me to give you reference,</p> <p>20 also?</p> <p>21 A. I -- I do not --</p> <p>22 Q. We're talking -- okay.</p> <p>23 THE WITNESS: I'm sorry, Ms. Henry. Can you</p> <p>24 blow that up? Okay. So, Ms. Henry, it's in two</p> <p>25 columns. So I'd appreciate the opportunity to review</p>

<p style="text-align: right;">Page 82</p> <p>1 the lower left-hand corner, and then I'll move up to the 2 rest of the sentence. That's fine. Thank you. 3 THE COURT REPORTER: Okay. I'm going to 4 search for that answer now. 5 (Record as shown on page 75, lines 8 through 6 16, read back.) 7 Q. (By Mr. Jones) Mr. Eaves, what did you mean 8 by the term "employment at will"? 9 A. Employment at will means that outside of legal 10 requirements that we would have as an organization, we 11 would reserve the right to edit, revise, add, or amend 12 something. And, similarly, an employee has the right or 13 advantage to terminate at any given point in time 14 without notice. 15 Q. Thank you. And if I could, I want to explore 16 your answer a little bit, to make sure that I understand 17 it. And DaVita -- 18 By at-will employment, as you used it, DaVita 19 wants to make it clear, I suppose, by signing this 20 acknowledgment, that its teammates -- that they don't 21 have a contract with DaVita that -- for a term of 22 employment, right? 23 A. That is correct. 24 Q. And that -- but, conversely, DaVita doesn't 25 have a hold -- a contractual obligation over the</p>	<p style="text-align: right;">Page 84</p> <p>1 procedures that intend to retain their at-will employees 2 as employees? 3 A. Tell me what you mean by "retain"? 4 Q. Well, I mean, you know, DaVita -- does DaVita 5 consider that their at-will employees add value to their 6 business? 7 A. Yes. 8 Q. And I would suppose that DaVita then is 9 aware -- or let me use a different word. It would be 10 disastrous, as you say, if DaVita's at-will employees 11 just didn't show up tomorrow. 12 So I suppose DaVita has in place policies and 13 procedures so that, number one, it could be aware of 14 whether their employees are unhappy; is that true? 15 A. I cannot think of a policy we have in place 16 that would allow us to see if our teammates are happy. 17 I don't think that's in the guidebook or the policy 18 handbook. 19 Q. Well, you certainly have procedures where 20 people in management -- you know, you have a -- what is 21 called a communications feedback loop. Are you familiar 22 with what I'm talking about? 23 You know who Charles Koch is, of Koch 24 Industries? He wrote a book on it about 25 years ago, 25 how he grew Koch Industries from being a</p>
<p style="text-align: right;">Page 83</p> <p>1 employee to show up for work tomorrow. Would that be 2 fair? 3 A. A contractual obligation -- help -- I'm not 4 sure I'm following you. Can you rephrase or restate? 5 Q. Okay. Yeah, I'm -- 6 DaVita wants the employee to understand that 7 there is no employment contract out there for a term of 8 employment with the at-will employee. That's part of 9 why they have them sign this acknowledgment, right? 10 A. Yes. 11 Q. Okay. Conversely, as you were saying on the 12 employee side of it, the employee doesn't have any 13 contractual obligation to show up for work the next day. 14 I mean, they can terminate the relationship 15 with DaVita, just like DaVita can terminate the 16 relationship with the employee; right? 17 A. They do not have a contractual obligation. I 18 agree with that statement. 19 Q. Okay. But certainly DaVita wants its 20 employees to show up for work tomorrow, right? 21 A. Yes, absolutely. We -- we perform very 22 critical patient care. It would be disastrous if they 23 did not. 24 Q. And would it be fair to say that DaVita's 25 policy -- that DaVita has in place policies and</p>	<p style="text-align: right;">Page 85</p> <p>1 \$100-million-a-year business to being a 2 \$125-billion-a-year business. And one of his primary 3 tools is that he had a feedback loop from one of his 4 employees, where they would give him feedback. 5 And he could get a sense of how happy they 6 were in their employment, and they would also be -- 7 figured if they're happy in their employment, they would 8 give him feedback as to how he could run his business 9 better. All right? 10 A. Mr. Jones -- 11 Q. I -- 12 A. -- there's questions on the table. You're 13 asking me about -- the first, if I'm familiar with the 14 feedback loop; the second is, am I familiar with 15 Mr. Koch. Which would you like me to answer? I'm 16 sorry. 17 Q. I was just giving you a reference to what I'm 18 talking about. 19 Does DaVita have a feedback loop, where they 20 sort of take the pulse of their employees? 21 A. Mr. Jones, I -- I would guess you might be 22 referencing something similar to like an engagement 23 survey. I would not conflate that with the teammate 24 handbook. I think that's a separate process that we 25 have in place to monitor engagement of our teammates.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. No, Mr. Eaves. I'm just trying to talk about 2 what we both already know, without going through and 3 defining every word in my question. Can we do that, 4 please? 5 A. We absolutely can. I'm just confused with 6 your question, sir. 7 Q. Let me go to the question, then. I have read 8 in the policies and procedures and -- in DaVita -- where 9 they have emails set up, where if employees have a 10 question about some -- one of the policies and 11 procedures, they can write and they will not -- and 12 they're going to write there, they're going to ask that 13 question, and there is someone who is charged with the 14 responsibility of answering that employee's questions; 15 isn't that right? 16 A. Yes. Okay. I will agree with you on that. 17 We definitely have those options in our handbook, yes. 18 Q. Do you know what that is? It's a feedback 19 loop. The employee's feeding you back questions to you, 20 because they have -- you know, they're letting DaVita 21 know, "Here's a question I have about this policy and 22 procedure." 23 And those employees are supposed to get an 24 answer 100 percent of the time; isn't that correct? 25 A. The employees responding from those email</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. (By Mr. Jones) Now, what is it that DaVita 2 means when it makes its employees acknowledge that the 3 policies do set forth the entire employment arrangement 4 between them and DaVita? What do you mean by employment 5 arrangement? 6 A. Yeah, I think there's -- there's two answers 7 to that. The first is that there are guidelines and 8 expectations we have about behaviors and conduct as a 9 teammate. And that, similarly, there are benefits and 10 resources that are available to teammates that are also 11 defined in that handbook. So the -- the entirety of the 12 two of those, as they come together, are the 13 arrangement. 14 Q. So let me see if I can give you my 15 understanding -- you tell me if I understand 16 correctly -- that these policies and procedures set 17 forth DaVita's expectation of its employees, is a broad 18 brush approach. Is that a fair description of the 19 policies and procedures? 20 A. I think that captures the -- the one of my two 21 answers to your response, yes. 22 Q. But it also sets forth what the employees can 23 expect from DaVita, too; is that true? 24 A. It does outline resources and -- and perhaps 25 benefits that would be available to them as employees of</p>
<p style="text-align: right;">Page 87</p> <p>1 lines? 2 Q. Well, yeah. The employees are supposed to get 3 an answer to their question 100 percent of the time, 4 true? 5 A. Sure. The -- the expectation would be that 6 teammates who operate those inboxes are responding to 7 teammate questions, yes. 8 Q. And if those questions coming from teammates 9 are directed like to a particular policy or procedure, 10 that may raise a red flag for leadership; isn't that 11 right? 12 A. I do think that's possible, Mr. Jones. 13 Q. Not only possible. It happened with the 14 Disaster Relief Policy in March of 2020, didn't it? 15 A. What was the question? 16 MR. JONES: Read it back, please. 17 (Record as shown on page 87, lines 8 through 18 11, read back.) 19 A. I believe I answered that question. 20 MR. JONES: Read my next question, please. 21 (Record as shown on page 87, lines 13 and 14, 22 read back.) 23 A. There were questions about the Disaster Relief 24 Policy, yes. We had many questions about COVID in 25 general during that time frame, yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 our organization. 2 Q. Now, let's go to topic number 17. All right. 3 Now, are you familiar with the definition of 4 "state the facts," as it was found in this subpoena? 5 A. I'm familiar with it, yes. 6 Q. Well, "State the facts regarding the 7 following. The creation of the Disaster Relief 8 Policy" -- we see a typo right off the bat. Let me 9 start over. 10 "State the facts regarding the following. The 11 creation of the Disaster Relief Policy contained in the 12 DaVita Teammate Handbook, including when it was created, 13 why it was created, who had input into its creation, the 14 Identity of any and all documents that evidence, or have 15 to do with its creation." Okay. 16 First of all, why was the Disaster Relief 17 Policy created by DaVita? 18 A. Sure. The Disaster Relief Policy was intended 19 to put some guidance around what to do in the event 20 teammates were not able to perform their duties in the 21 event of a natural disaster. 22 Q. All right. I want to drill down on that. 23 The -- I want to reference you to what has been produced 24 previously by DaVita. 25 MR. JONES: And let's go to TRC triple -- or</p>

<p style="text-align: right;">Page 90</p> <p>1 000049, Christina.</p> <p>2 MS. PETERSEN: Is that a prior exhibit?</p> <p>3 MR. JONES: Yeah, that's exhibit -- we're</p> <p>4 still on Exhibit --</p> <p>5 MS. PETERSEN: 5, maybe.</p> <p>6 MR. JONES: -- 5. Yeah.</p> <p>7 MS. PETERSEN: Okay.</p> <p>8 MS. HENRY: What was the number, page number?</p> <p>9 MR. JONES: 49. 49.</p> <p>10 Q. (By Mr. Jones) Now, first of all, when I read</p> <p>11 the Disaster Relief Policy -- and this is the Disaster</p> <p>12 Relief Policy that existed on January 1, 2020. Okay?</p> <p>13 I see that the first sentence says that, "The</p> <p>14 Disaster Relief Policy provides for pay continuance</p> <p>15 during an emergency time frame when a declared emergency</p> <p>16 or natural disaster prevents teammates from performing</p> <p>17 their regular duties." Okay.</p> <p>18 Do you see that, sir?</p> <p>19 A. I do see that.</p> <p>20 Q. Does the Disaster Relief Policy apply only to</p> <p>21 teammates who have prevented -- who have been prevented</p> <p>22 from performing their regular duties by an emergency or</p> <p>23 natural disaster?</p> <p>24 A. I'm not -- I'm not sure I understand the</p> <p>25 question. Only to teammates?</p>	<p style="text-align: right;">Page 92</p> <p>1 only speak to our non-exempt team population.</p> <p>2 Q. Okay. That's all I'm going to talk about.</p> <p>3 And that's the teammates, so --</p> <p>4 A. Okay. Just make sure you and I are on the</p> <p>5 same page about that. Thank you.</p> <p>6 Q. Yeah. Let me just kind of like give an in</p> <p>7 globo right here, so that -- that's all we're talking</p> <p>8 about, are non-exempts. Unless I ask you questions</p> <p>9 about exempt, which you remember earlier I asked you</p> <p>10 about yourself -- and so unless I say --</p> <p>11 When I say "teammates," I'm talking about</p> <p>12 non-exempt teammates. Okay?</p> <p>13 A. Sure.</p> <p>14 Q. So your testimony today is, only those</p> <p>15 teammates that were prevented from doing their regular</p> <p>16 duties could expect -- by an emergency or a natural</p> <p>17 disaster could expect any benefits from the Disaster</p> <p>18 Relief Policy. Is my statement true or false?</p> <p>19 A. True, in the event -- in the event that this</p> <p>20 policy was triggered, true.</p> <p>21 Q. Okay. Then let's look at the policy, then.</p> <p>22 And let's jump down here to "Pay Practices."</p> <p>23 MR. JONES: That's on page 000050, Christina,</p> <p>24 the next page. And, yeah, get rid of that. Thank you.</p> <p>25 Q. (By Mr. Jones) If we look at -- under "Pay</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Let me -- I'll re-ask it.</p> <p>2 Does the Disaster Relief Policy -- is it</p> <p>3 intended to apply only to those teammates who have been</p> <p>4 prevented from performing the regular duties by an</p> <p>5 emergency or a natural disaster?</p> <p>6 A. It can be for -- if teammates are prevented</p> <p>7 from doing their regular duties. So not just limited to</p> <p>8 a natural disaster or a declared emergency, it's -- it's</p> <p>9 for performing their regular duties.</p> <p>10 Q. Yeah. But it's a true/false question. I want</p> <p>11 to ask it again, if you don't mind. I'm going to give</p> <p>12 you all the time to explain your answer. But I would</p> <p>13 like a yes or no first, please, so I can know I</p> <p>14 understand your answer. So let me ask it again.</p> <p>15 Does the Disaster Relief Policy, as we see</p> <p>16 here beginning on TRC 000049 -- was it intended to apply</p> <p>17 only to teammates who were prevented from performing</p> <p>18 their regular duties by an emergency or natural</p> <p>19 disaster, yes or no?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. So it is only those teammates who were</p> <p>22 prevented from performing their regular duties that</p> <p>23 could expect to receive any benefits from the Disaster</p> <p>24 Relief Policy. Is that your testimony today, sir?</p> <p>25 A. Well, not -- not entirely, because it would</p>	<p style="text-align: right;">Page 93</p> <p>1 Practice for Non-Exempt Employees." Do you see that?</p> <p>2 A. I do see that.</p> <p>3 Q. All right. And this is what it says. The</p> <p>4 first paragraph says, "If a facility or business office</p> <p>5 is closed due to a declared emergency or natural</p> <p>6 disaster as defined above, non-exempt teammates will be</p> <p>7 paid for their regularly scheduled hours at their base</p> <p>8 rate of pay during the designated emergency time frame."</p> <p>9 Okay. When I --</p> <p>10 Am I correct that the first paragraph provides</p> <p>11 Disaster Relief Policy benefits to those teammates who</p> <p>12 can't get to work because the facility or business</p> <p>13 office is closed because of a declared emergency or</p> <p>14 natural disaster; right?</p> <p>15 A. Yes. If the facility or business office is</p> <p>16 closed due to one of those and they're not able to</p> <p>17 perform their regular duties, yes, I agree with you.</p> <p>18 Q. And they will be paid at their regular --</p> <p>19 they'll be paid their regularly scheduled hours at their</p> <p>20 base rate of pay, no premium there; right?</p> <p>21 A. That's correct.</p> <p>22 Q. The second paragraph says, "If a facility or</p> <p>23 business office opens late or closes early due to a</p> <p>24 declared emergency or natural disaster as defined</p> <p>25 above," the teammates -- and I'm paraphrasing -- will be</p>

<p style="text-align: right;">Page 94</p> <p>1 told about their new hours. And if they show up and</p> <p>2 work those hours, they will be paid at their base rate</p> <p>3 of pay; is that correct?</p> <p>4 A. Give me just a second to read through that,</p> <p>5 Mr. Jones. Please repeat your question.</p> <p>6 Q. The second paragraph says -- and I'm, you</p> <p>7 know, paraphrasing it. But when I read it, what I saw</p> <p>8 it to say is that if an emergency or natural disaster</p> <p>9 causes the facility to open -- or change its opening and</p> <p>10 closing times -- or opening or closing times, then the</p> <p>11 teammates' hours are going to be rescheduled. They may</p> <p>12 have to come in earlier or leave later.</p> <p>13 And if they worked those rescheduled hours,</p> <p>14 they're going to be paid at the regular rate of pay;</p> <p>15 correct?</p> <p>16 A. And just to be clear, we're just talking about</p> <p>17 the first sentence of that paragraph?</p> <p>18 Q. Yeah, yeah. Yeah, I mean, I'm not going to</p> <p>19 read the whole paragraph every time I ask you a</p> <p>20 question. It's not a trick question.</p> <p>21 A. I understand.</p> <p>22 Q. I realize it says some other things in there,</p> <p>23 too. We're going to get to it. But I would like a</p> <p>24 clean question and a clean answer, because this is going</p> <p>25 to be put down in booklet form. All right?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. So the only situation, under the "Pay Practice</p> <p>2 for Non-Exempt Teammates," where a -- where premium pay</p> <p>3 benefits would be paid to a teammate is when the</p> <p>4 facility or business office is open and the teammate</p> <p>5 shows up to work their regular -- or, rather, their</p> <p>6 scheduled hours; true?</p> <p>7 A. I'm sorry. Tell me that again?</p> <p>8 Q. Yeah. So the only situation, under the "Pay</p> <p>9 Practice for Non-Exempt Teammates," where premium pay is</p> <p>10 paid is if -- is when the teammates who are working at a</p> <p>11 facility or business office that is open during the</p> <p>12 emergency time frame, and they report to their location</p> <p>13 and work their scheduled hours; they'll get premium pay,</p> <p>14 right?</p> <p>15 A. Please give me a second. Yes.</p> <p>16 Q. Now, lets go back to page 49. And you</p> <p>17 remember when I was asking you questions about the first</p> <p>18 sentence. It says, "The Disaster Relief Policy provides</p> <p>19 for pay continuance during an emergency tame frame when</p> <p>20 a declared emergency or natural disaster prevents</p> <p>21 teammates from performing their regular duties."</p> <p>22 The disaster -- the pay practices certainly</p> <p>23 provides continuation of pay when teammates aren't able</p> <p>24 to work because the facility's closed, right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 95</p> <p>1 And so the second paragraph of the "Pay</p> <p>2 Practice for Non-Exempt Teammates" provides that if a</p> <p>3 facility or business office opens late or closes early</p> <p>4 due to a declared emergency or natural disaster, that</p> <p>5 those teammates who show up and work their hours that</p> <p>6 have changed because they're going to open late or close</p> <p>7 early, they're going to be paid at their regular rate of</p> <p>8 pay; right?</p> <p>9 A. Unless state law provides otherwise, yes.</p> <p>10 Q. Yeah, yeah. Now, we go to the third</p> <p>11 paragraph. And it says, "If a designated facility or</p> <p>12 business office is open during the emergency time frame,</p> <p>13 teammates who report to their location and work their</p> <p>14 scheduled hours will be paid premium pay for all hours</p> <p>15 worked"; right?</p> <p>16 A. That's correct.</p> <p>17 Q. But we go down to the next to last paragraph.</p> <p>18 And it says, "If a facility or business office is open</p> <p>19 during the emergency time frame and teammates are unable</p> <p>20 to work, teammates should utilize PTO in accordance with</p> <p>21 the PTO policy." Do you see that?</p> <p>22 A. I do see that.</p> <p>23 Q. Is that correct, that was the pay practices</p> <p>24 for non-exempt teammates on January 1, 2020?</p> <p>25 A. I agree.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. But the pay practices of the Disaster Relief</p> <p>2 Policy also provide that people who show up at a</p> <p>3 facility that's open and work their scheduled hours are</p> <p>4 going to get premium pay, right?</p> <p>5 A. When an actual disaster prevents them from</p> <p>6 doing their normal duties, yes.</p> <p>7 Q. But it doesn't say that, does it?</p> <p>8 MR. JONES: Let's go back to page --</p> <p>9 Christina, page 50.</p> <p>10 Q. (By Mr. Jones) And let me read it to you.</p> <p>11 And I'm looking on the right-hand corner of the column,</p> <p>12 the first full paragraph. "If a designated facility or</p> <p>13 business office is open during the emergency time frame,</p> <p>14 teammates who report to their location and work their</p> <p>15 scheduled hours will be paid premium pay for all hours</p> <p>16 worked. Unless state law requires otherwise, premium</p> <p>17 pay will be one-and-one-half times the teammate's base</p> <p>18 rate of pay."</p> <p>19 It doesn't say anything about their regular</p> <p>20 duties being disrupted. To the contrary, it says if you</p> <p>21 show up at a facility that's open and you work your</p> <p>22 scheduled hours, you get premium pay; isn't that true?</p> <p>23 A. Yeah, I -- I think where I disagree with you,</p> <p>24 though, is -- it does say that. It's just on page 49.</p> <p>25 So I feel like your question is kind of entering midway</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 98</p> <p>1 into written documentation. It does say that at the 2 beginning of the policy, Mr. Jones. 3 Q. All right. Let's go up here, and let's look 4 at it. All right? Okay. Let's go to page 49. Now, 5 the Disaster Relief Policy provides for pay continuance 6 during an emergency time -- when a declared emergency or 7 natural disaster prevents teammates from performing 8 their regular duties. All right? 9 So we've got a situation where the facility or 10 the business office is closed, and teammates can't get 11 to work. That prevents them from working their 12 regular -- from performing their regular duties, right? 13 A. If -- if the facility is closed, yes. 14 Q. Then you have a situation where -- if the 15 facility opens early or closes late, then the teammate 16 shows up and works their scheduled hours, they're going 17 to get paid regular pay. 18 That certainly, by definition, is going to 19 show that these teammates -- the emergency or natural 20 disaster prevented them from performing their regular 21 duties, 'cause they had to work different hours; right? 22 A. (No response.) 23 Q. Right? 24 A. If the schedule had been adjusted when they 25 come into the office, yeah, they -- they would be --</p>	<p style="text-align: right;">Page 100</p> <p>1 the second page of this document -- page 50 -- please? 2 Okay. 3 A. Mr. Jones, can you direct me where you're 4 referring? 5 Q. (By Mr. Jones) Sure. On page 50, right-hand 6 column, first full paragraph. "If a designated facility 7 or business office is open during the emergency time 8 frame, teammates who report to their location and work 9 their scheduled hours will be paid premium pay for all 10 hours worked. Unless state law requires otherwise, 11 premium pay will be one-and-one-half times the 12 teammate's base rate of pay." 13 Those are teammates whose ability to perform 14 their work has not been interfered with by an emergency 15 or a natural disaster. Because their facility is open, 16 they could show up and work their scheduled hours, they 17 get premium pay; isn't that true? 18 A. It is. And I think the important language in 19 there is during the emergency time frame, which would 20 naturally -- 21 Q. Hold on. Wait, wait, wait, wait. You're 22 trying to step all over my question and answer a 23 question I didn't ask. All right? We're going to get 24 into that in a minute, but I would like a clean answer 25 to this question. All right? So let's go back. Let's</p>
<p style="text-align: right;">Page 99</p> <p>1 they would be paid in accordance with that, yeah. 2 Q. Then, they -- I have a situation where -- if 3 you can't come to work and the facility is open, but the 4 emergency or natural disaster prevents the teammate from 5 coming to work, they get regular pay. 6 And certainly under that scenario, the 7 emergency or natural disaster prevented those teammates 8 from performing their regular duties; right? 9 A. Can you rephrase the question? I feel like 10 there's a lot of narratives, and then there's a "right" 11 at the end. What's the question? 12 Q. Well, then we have a situation where the 13 facility or business office is open and -- but the 14 teammate, for whatever reason, cannot appear at that 15 facility or home office because of the natural disaster 16 or emergency. And in those -- that situation, the 17 teammate gets to claim PTO, right? 18 A. Well, if they're -- if they're able to perform 19 their job duties at work, we would pay them for the time 20 they're able to come in to work, when the facility is 21 open. 22 Q. But you'd pay premium time for that, right? 23 A. (No response.) 24 Q. Right? That's what it says? 25 THE WITNESS: Ms. Henry, can you please go to</p>	<p style="text-align: right;">Page 101</p> <p>1 look at this paragraph. 2 First full paragraph in the right column, 3 which says, "If a designated facility or business office 4 is open during the emergency time frame, teammates who 5 report to their location and work their scheduled hours 6 will be paid premium pay for all hours worked. Unless 7 state law requires otherwise, premium pay will be 8 one-and-one-half times the teammate's base rate of pay." 9 What that paragraphs means is that if a DaVita 10 teammate is able to go to work, because the natural 11 disaster or emergency has not closed the facility -- 12 they're able to go to work, 'cause the natural disaster 13 or the emergency has not interfered with their ability 14 to work their scheduled hours. 15 If those employees show up and work the 16 scheduled hours, they're going to be paid premium time. 17 That's what that paragraph means, doesn't it? 18 A. If an emergency time frame has been declared, 19 yes. 20 Q. Correct. Now -- so there is a situation 21 within the Disaster Relief Policy where premium time is 22 paid to DaVita teammates, but yet they have -- their 23 ability to work has not been affected; isn't that true? 24 A. What's the last part of that? You -- you -- 25 I'm sorry. You keep leaning back on the chair. I'm not</p>

<p style="text-align: right;">Page 102</p> <p>1 catching the microphone.</p> <p>2 Q. So there is a situation, under the emergency</p> <p>3 disaster policy, where DaVita employees are -- show up</p> <p>4 at their regular duties, at their -- at the regular</p> <p>5 facility or business office -- it has not been closed --</p> <p>6 and perform their scheduled hours, because the emergency</p> <p>7 or natural disaster has not interfered with their</p> <p>8 ability to do so.</p> <p>9 Those employees receive premium time -- time</p> <p>10 and a half -- unless state law requires otherwise, true?</p> <p>11 A. False.</p> <p>12 Q. How is it false?</p> <p>13 A. Because an emergency time frame is going to</p> <p>14 imply that there was actually a natural disaster that</p> <p>15 was occurring, that prevented them from coming in and</p> <p>16 doing their normal job duties.</p> <p>17 Q. But how can you say -- what are you saying?</p> <p>18 They have to be able -- they can show up and</p> <p>19 work their scheduled hours in a facility or business</p> <p>20 office that's open, but somehow the natural disaster or</p> <p>21 the emergency had to have interfered with their ability</p> <p>22 to perform their natural -- their normal duties?</p> <p>23 In what way?</p> <p>24 A. No, what -- what I'm saying is that a natural</p> <p>25 disaster in and of itself does not necessarily imply</p>	<p style="text-align: right;">Page 104</p> <p>1 they're performing their job duties, when the -- the</p> <p>2 opening statement of this entire policy is saying that</p> <p>3 this is in place, in the event they're not able to do</p> <p>4 so.</p> <p>5 And we have this in place so that we</p> <p>6 incentivize people outside of those distractions and to</p> <p>7 come in, because we're incentivizing them to do so. But</p> <p>8 an emergency declaration by the President or by, you</p> <p>9 know, an elected official in and of itself is not going</p> <p>10 to necessarily infer that a teammate is not able to</p> <p>11 perform their natural job functions. That -- that --</p> <p>12 That's just not the way that this policy is</p> <p>13 laid out. That first sentence is critical. You can't</p> <p>14 just jump into the policy and -- and say, in and of</p> <p>15 itself, that a declared emergency is going to be</p> <p>16 indicative -- or dictate, in and of itself, how we would</p> <p>17 apply a pay practice.</p> <p>18 Q. Why do you think so many teammates called in</p> <p>19 and asked if they were going to get premium pay? Do you</p> <p>20 think they misread this policy?</p> <p>21 A. I think there were a lot of questions at this</p> <p>22 period of time, COVID-19.</p> <p>23 Q. I think there were, too. And I'm asking you</p> <p>24 why you think there were that many questions; not</p> <p>25 whether there were questions.</p>
<p style="text-align: right;">Page 103</p> <p>1 that this is triggered. I can reference fires that took</p> <p>2 place, that were declared emergencies. It did not</p> <p>3 disrupt somebody's ability to perform their normal job</p> <p>4 duties. And as such, if they came in to work, we would</p> <p>5 pay them their normal pay.</p> <p>6 And if they didn't make it in to that work --</p> <p>7 if they didn't make it in to work, they have the option</p> <p>8 to use PTO. There was nothing that prevented them from</p> <p>9 coming into the building or the facility and performing</p> <p>10 their normal job functions.</p> <p>11 Q. All right. Well, let me ask you this.</p> <p>12 If the facility or business office was in an</p> <p>13 emergency time frame and was one of the affected</p> <p>14 facilities or business offices within that time frame</p> <p>15 and the DaVita employee showed up, worked their regular</p> <p>16 hours, did their regular duties, would they be entitled</p> <p>17 to premium pay?</p> <p>18 A. No, because you're -- you're implying in that</p> <p>19 question that they were able to perform their normal job</p> <p>20 duties.</p> <p>21 Q. Well, what is --</p> <p>22 A. And that's the --</p> <p>23 Q. When does it ever apply --</p> <p>24 A. That's the inherent mishear that I -- that I'm</p> <p>25 hearing in your question, is that they're coming in and</p>	<p style="text-align: right;">Page 105</p> <p>1 A. I -- I think there were questions about</p> <p>2 whether or not people were going to receive additional</p> <p>3 considerations or concessions during COVID-19.</p> <p>4 Q. I think so, too. Why do you think they did --</p> <p>5 they thought that? Do you think they read this policy,</p> <p>6 and they thought they were entitled to premium pay?</p> <p>7 A. No, sir. I -- I think that there were a</p> <p>8 number of questions about other things that we might do,</p> <p>9 which DaVita did.</p> <p>10 Q. Do you think that this policy could be</p> <p>11 interpreted as that all facilities, during COVID-19,</p> <p>12 should get a 50 percent premium pay for those teammates</p> <p>13 that came in and worked their scheduled hours for a</p> <p>14 facility that was open?</p> <p>15 A. I'm sorry. I missed the first part of your</p> <p>16 question. Would you please repeat it, or have the court</p> <p>17 reporter do so?</p> <p>18 MR. JONES: Read it back for him, please.</p> <p>19 (Record as shown on page 105, lines 10 through</p> <p>20 14, read back.)</p> <p>21 MR. JONES: Did you say 15 percent, Madam</p> <p>22 Court Reporter?</p> <p>23 THE COURT REPORTER: 50 percent.</p> <p>24 MR. JONES: Thank you.</p> <p>25 Q. (By Mr. Jones) Do you understand the question</p>

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 106</p> <p>1 Mr. Eaves?</p> <p>2 A. I do. And I -- I think that where you would</p> <p>3 want to focus in the pay practice -- there might be some</p> <p>4 question, which there was, about how the policy would be</p> <p>5 interpreted.</p> <p>6 But, again, I go back and stand firm in my --</p> <p>7 my proclamation that this is intended to be addressed in</p> <p>8 the event people are not able to perform their</p> <p>9 natural -- or their -- perform their normal job</p> <p>10 functions.</p> <p>11 Q. Mr. Eaves, you misunderstand me completely.</p> <p>12 You want to argue your point, that I'm not trying to</p> <p>13 make here. And I would appreciate it if you would stop</p> <p>14 doing that and answer my questions. Now, I know you</p> <p>15 want to make that point. And I'm going to get to that</p> <p>16 to, too, in a minute.</p> <p>17 But I also know that over -- that hundreds,</p> <p>18 perhaps even thousands, of DaVita employees read the</p> <p>19 same paragraph that I read. And they -- they had</p> <p>20 thought, or at least asked, whether they were going to</p> <p>21 get premium pay.</p> <p>22 Because when they read that paragraph on</p> <p>23 page 50, that full paragraph that is on the right-hand</p> <p>24 column that I just read to you -- "If a designated</p> <p>25 facility or business office is open during the emergency</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. (By Mr. Jones) Hold on, hold on. Hold on,</p> <p>2 Mr. Eaves. There's no question on the table. There's</p> <p>3 no question on the table right now. All right? It was</p> <p>4 stepped all over with -- by that repartee between</p> <p>5 counsel.</p> <p>6 Now, Mr. Eaves, if I'm making you</p> <p>7 uncomfortable with the volume or my tone, you tell me.</p> <p>8 If the questions are making you uncomfortable, then</p> <p>9 that's okay; you can say that, too. But the questions</p> <p>10 are going to remain on the table. Because sometimes we</p> <p>11 find ourselves in a very uncomfortable position because</p> <p>12 we don't want to admit that the shortest distance</p> <p>13 between two points is a straight line.</p> <p>14 Now, Mr. Eaves, I read that paragraph right</p> <p>15 there. And I'm not talking about the emergency time</p> <p>16 frame. When I read that paragraph on page 50 -- it</p> <p>17 says, "If a designated facility or business office is</p> <p>18 open during the emergency time frame, teammates who</p> <p>19 report to their location and work their scheduled hours</p> <p>20 will be paid premium pay for all hours worked."</p> <p>21 I read that as meaning that in an emergency</p> <p>22 situation, where there's a declared emergency time</p> <p>23 frame, when some employees are interfered with from</p> <p>24 showing up to work -- and I make it my business to show</p> <p>25 up for work, to work my scheduled hours, I'm going to</p>
<p style="text-align: right;">Page 107</p> <p>1 time frame, teammates who report to their location and</p> <p>2 work their scheduled hours will be paid premium pay for</p> <p>3 all hours worked" -- they read that to mean if they</p> <p>4 showed up for work, that they got premium pay.</p> <p>5 Now, that happened. A lot of employees read</p> <p>6 that paragraph like I did, didn't they, Mr. Eaves?</p> <p>7 MS. PETERSEN: Objection. Object to the form,</p> <p>8 and ask that Counsel please lower his voice when</p> <p>9 speaking to the witness.</p> <p>10 MR. JONES: The witness has said five times in</p> <p>11 the last 20 minutes that he could not hear me. I am not</p> <p>12 yelling at him. I am raising my voice at his request,</p> <p>13 Ms. Petersen. Now, I don't appreciate that at all.</p> <p>14 That is bush league lawyering. I am not yelling at this</p> <p>15 witness, and I do not want you putting it on the record</p> <p>16 or implying that I am.</p> <p>17 MS. PETERSEN: No need for insults, Counsel.</p> <p>18 I'm simply --</p> <p>19 MR. JONES: No. And that's right. And you</p> <p>20 insult me by suggest- -- by saying that I'm yelling at</p> <p>21 the witness.</p> <p>22 A. Mr. Jones, I -- you're making me a bit</p> <p>23 uncomfortable. Please -- please let me just explain my</p> <p>24 point here. And I -- okay. Listen. Under the</p> <p>25 emergency --</p>	<p style="text-align: right;">Page 109</p> <p>1 get premium pay. That's how I read it.</p> <p>2 Now, do you think that is an unreasonable</p> <p>3 reading of the paragraph, that I pointed out?</p> <p>4 A. I do not believe that to be unreasonable, as</p> <p>5 you're looking at that document.</p> <p>6 Q. Okay.</p> <p>7 A. I -- I --</p> <p>8 Q. You agree with that interpretation, true?</p> <p>9 A. Mr. Jones, policy from beginning to end for me</p> <p>10 is quite clear. I think if you were to go in and look</p> <p>11 at those subheadings, I could see how there might be</p> <p>12 some questions around that.</p> <p>13 It would not be unusual for us to get</p> <p>14 questions around policies, that my team would interpret</p> <p>15 for teammates. Okay? There were questions about that.</p> <p>16 There were questions about exposure. There were</p> <p>17 questions about PPE. There were questions about the</p> <p>18 effectiveness of the PPE.</p> <p>19 And for us to go into any of those, whether</p> <p>20 that -- those be policies or procedures that were done</p> <p>21 from an infection control standpoint, it doesn't</p> <p>22 necessarily mean that in page 1, page 2, or page 3 --</p> <p>23 that you can selectively jump in and try to make that</p> <p>24 run to your benefit.</p> <p>25 We have people -- we have teams, just as you</p>

<p style="text-align: right;">Page 110</p> <p>1 had inferred earlier in these handbooks, where if 2 there's questions, we have the ability to jump in and 3 provide guidance around that. 4 Q. I appreciate that. But let me just say this, 5 Mr. Eaves. The fact is, you don't agree with that 6 interpretation of the policy under the "Pay Practice for 7 Non-Exempt Teammates"; isn't that true? 8 A. It is true that I don't agree with that. And 9 I think you are in receipt of documents/emails that 10 would also suggest that there are a number of people 11 that also agree with me in that assessment. 12 This is not Jeremy, this is not one person 13 that's overseeing this, or a group of people that's 14 trying to cheat each other -- cheat anyone out of 15 something in any way. We care very deeply for our 16 teammates. And, quite honestly, I think we've done a 17 number of things to be responsive to this COVID-19 18 crisis. 19 Q. You don't have to be defensive, Mr. Eaves. 20 Now, the fact is -- my question is this. 21 You do understand, though, how someone could 22 read this policy like I did and think that my 23 interpretation of it was a reasonable interpretation; 24 correct? 25 A. I do not agree that it would be a reasonable</p>	<p style="text-align: right;">Page 112</p> <p>1 And I can't allow you to do that. So please don't do 2 that anymore. All right? And we'll get through this. 3 We'll motor -- I'm not making these questions up as we 4 go, Mr. Eaves. I've read the policy. I've got them 5 all -- all the questions are written down right here. 6 Okay? 7 And, you know, I understand -- I've been 8 listening very carefully to you. DaVita's position is, 9 there's only one reasonable interpretation of its -- of 10 the pay practices for non-exempt teammates; and that is 11 the way that they interpreted it. Is that a true 12 statement? 13 A. "They" being? 14 Q. DaVita. 15 A. Correct. 16 Q. Why was it necessary -- why did DaVita think 17 it was necessary, then, to clarify the Disaster Relief 18 Policy? 19 A. Yes, I'm happy to speak to that. And, 20 Mr. Jones, I -- I'd be remiss if I didn't tell you this. 21 I do not want to come across as uncooperative with you. 22 I'm trying to do the best that I can. I feel like the 23 way you phrase questions, sometimes you're asking for a 24 simple yes or no. 25 And the context for me is important, and I</p>
<p style="text-align: right;">Page 111</p> <p>1 interpretation, when you read the full context of the 2 policy. 3 Q. You think it would be an unreasonable 4 interpretation? 5 A. I'm sorry. Are those your words, or mine? 6 Q. No, I'm asking you. 7 Do you think it would be an unreasonable 8 interpretation for someone to read this section that I 9 just read to you and think that, when they show up to go 10 to work in the middle of a health crisis, they would be 11 entitled to premium pay? 12 A. Are you asking me this as a fact witness in my 13 individual opinion, or do you want me to speak to that 14 from a corporate perspective? 15 Q. From a corporate perspective. 16 A. I think it's unreasonable, because you have to 17 consider the entirety of the policy from beginning to 18 end. 19 Q. I see. So you don't -- you think there's only 20 one reading of this policy, and that is the way that 21 DaVita chose to interpret it; true? 22 A. I think that it's -- it's the way the policy 23 was written, right. And that is the correct 24 interpretation of the policy. 25 Q. You see, Mr. Eaves, you changed my question.</p>	<p style="text-align: right;">Page 113</p> <p>1 want to make sure that I get that on the record. So I 2 just want to be clear. That's all I'm trying to do. I 3 really want to be cooperative, and I really want to make 4 sure I'm helping out with this. 5 Q. Now, Mr. Eaves, let me make a point here. All 6 right? Okay? 7 First of all, most lawyers wouldn't allow you 8 to get away at all with doing that. I want you to make 9 your point. Okay? Now -- and let me make this point. 10 Okay? The questions I asked are yes and no questions. 11 You will -- I will always afford you the courtesy to 12 explain your answers. It is considered, however, to be 13 evasive for a witness to start explaining an answer 14 before they answer it. 15 If I ask you a yes or no question, I would 16 appreciate you giving me a yes or no answer and then 17 explain it. Because that way, I will not treat you as 18 an evasive witness. Is that a fair rule, Mr. Eaves? 19 A. It's a fair rule, Mr. Jones. I -- 20 procedurally -- 21 Q. Thank you very much. 22 A. I understand there's a question on the table. 23 Once I've answered that question, may I request a break? 24 Q. You can take a break right now, Mr. Eaves. 25 A. I -- I prefer to answer the question, and then</p>

<p style="text-align: right;">Page 114</p> <p>1 I'm -- I'm happy to do so.</p> <p>2 Q. Yeah, I've forgotten what it is. What is the</p> <p>3 question?</p> <p>4 A. I think your question was why we had made</p> <p>5 efforts to clarify the policy.</p> <p>6 Q. Well, let me ask you this. We'll start over</p> <p>7 on it. Okay?</p> <p>8 Do you think that this policy was clear on</p> <p>9 January 1, 2020?</p> <p>10 A. Yes.</p> <p>11 Q. You didn't think that it needed any</p> <p>12 clarification on January 1, 2020?</p> <p>13 A. No.</p> <p>14 Q. Did you feel that the policy needed</p> <p>15 clarification after March -- some time after March 15,</p> <p>16 2020?</p> <p>17 A. We -- we did make a decision to put specific</p> <p>18 language in the policy, yes. To answer your question, I</p> <p>19 did feel it necessary, speaking on behalf of DaVita.</p> <p>20 Q. Now, what changed DaVita's mind then from --</p> <p>21 going on January 1, 2020, believing that their policy</p> <p>22 was clear and then something happened on March 15, which</p> <p>23 is barely 45 days later, that DaVita felt they had to</p> <p>24 amend their policy and clarify it?</p> <p>25 What happened?</p>	<p style="text-align: right;">Page 116</p> <p>1 us to clarify some of those high volume/repetitive</p> <p>2 questions.</p> <p>3 The one about the Disaster Relief Policy</p> <p>4 naturally made sense to address within our teammate</p> <p>5 handbook. And the reason for that was because that's</p> <p>6 where teammates were going and pulling out the selective</p> <p>7 language that was in there.</p> <p>8 Q. All right. So did anyone within management</p> <p>9 feel that the Disaster Relief Policy could be</p> <p>10 interpreted so that people who showed up and worked</p> <p>11 their scheduled hours were entitled to premium pay?</p> <p>12 A. Can you define "management" for me?</p> <p>13 Q. You know, I don't know what to call it. The</p> <p>14 management/leadership, you know. That's people who</p> <p>15 supervise over people. Management is defined as getting</p> <p>16 things done through other people, isn't it?</p> <p>17 So I would think that it would be somebody who</p> <p>18 has some type of supervisory or reporting</p> <p>19 responsibility.</p> <p>20 A. Okay. There -- there -- there are documents</p> <p>21 that were forwarded from questions from teammates that</p> <p>22 would ask about and -- and make us aware of the fact</p> <p>23 that there were questions around that.</p> <p>24 When those did come into people services</p> <p>25 channels, through the help desk, through my team, there</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Sure. When the COVID crisis hit, we started</p> <p>2 to get one or two off questions, which originally came</p> <p>3 into our people services structure. Because of the</p> <p>4 number of questions, we actually set up help desks and</p> <p>5 help lines to field the number of questions that came</p> <p>6 in, to COVID.</p> <p>7 As I mentioned earlier, there were questions</p> <p>8 about PPE, exposure, benefits, personal issues people</p> <p>9 might be having with how to address child care. And</p> <p>10 Mr. Jones, one of those was also around whether or not</p> <p>11 there would be additional considerations for pay,</p> <p>12 particularly as it related to the Disaster Relief</p> <p>13 Policy. The Disaster Relief Policy was never</p> <p>14 considered, because teammates were able to perform their</p> <p>15 normal job functions.</p> <p>16 We continued to get those questions. Our next</p> <p>17 step was to make sure we were being clear about that, by</p> <p>18 putting out communications that started in terms of</p> <p>19 blurbs in our Village communications that were attached</p> <p>20 to the intranet; that were spoken about on our Voice of</p> <p>21 the Village calls, which are our large-scale town halls.</p> <p>22 And there were still questions about it, just</p> <p>23 as there were about many of the other things that we had</p> <p>24 spoken to. And as we continued to get questions around</p> <p>25 those, there were different venues and alternatives for</p>	<p style="text-align: right;">Page 117</p> <p>1 was -- there was no question about that.</p> <p>2 Q. No question about what? That the people were</p> <p>3 asking these questions?</p> <p>4 A. No, that it did not apply.</p> <p>5 Q. Okay.</p> <p>6 A. So to your question, were there leaders? Yes,</p> <p>7 I think there were some supervisors who were forwarding</p> <p>8 questions from their PCTs and their nurses, to say,</p> <p>9 "Hey, can you give us some interpretation of that?"</p> <p>10 That's why we -- we exist. And we did -- we did</p> <p>11 interpret that.</p> <p>12 Now, levels of leadership that would look at</p> <p>13 that, my -- my team, any -- anybody that was looking at</p> <p>14 that, that was familiar with the policy, were able to</p> <p>15 say that this did not apply because, fundamentally and</p> <p>16 foundationally, no one was dis- -- distracted from</p> <p>17 performing their normal job duties.</p> <p>18 Q. Do you know Kevin Spring?</p> <p>19 A. I'm sorry. Who?</p> <p>20 Q. Kevin Spring.</p> <p>21 A. The name is not ringing a bell, no. Can you</p> <p>22 tell me his title?</p> <p>23 Q. No. I'm looking at --</p> <p>24 MR. JONES: Christina, would you put up</p> <p>25 DaVita_003371?</p>

<p style="text-align: right;">Page 118</p> <p>1 MS. HENRY: The new stuff, 3371?</p> <p>2 MS. PETERSEN: And, Counsel, I -- there's not</p> <p>3 quite a question pending here. But just recognizing</p> <p>4 that the witness had asked for a break a while back, so</p> <p>5 not sure --</p> <p>6 MR. JONES: Sure.</p> <p>7 MS. PETERSEN: -- if now is a time -- or in a</p> <p>8 moment.</p> <p>9 MR. JONES: Sure. Now's a perfect time.</p> <p>10 (Recess taken from 3:59 p.m. to 4:10 p.m.)</p> <p>11 Q. (By Mr. Jones) Mr. Eaves, whose</p> <p>12 responsibility was it in DaVita to interpret the</p> <p>13 Disaster Relief Policy on March 1, 2020?</p> <p>14 A. There would not be a particular person. My</p> <p>15 policy team would interpret and create answers, if there</p> <p>16 were questions about it, usually.</p> <p>17 Q. Well, I don't know how that works. Why don't</p> <p>18 you explain it to me?</p> <p>19 A. Yeah, if somebody has a question? I just want</p> <p>20 to be clear.</p> <p>21 Q. Go ahead.</p> <p>22 A. I'm -- I'm sorry. I was asking for</p> <p>23 clarification.</p> <p>24 Q. Sure. What do you mean by "team"? Who -- I</p> <p>25 mean, you said your policy team. Was there a team of</p>	<p style="text-align: right;">Page 120</p> <p>1 according to its own terms, it came into effect. I'm</p> <p>2 giving you a point of reference in the policy.</p> <p>3 Who was the head of the team that was</p> <p>4 responsible for interpreting the Disaster Relief Policy</p> <p>5 on January 1, 2020?</p> <p>6 A. That rolls up to Oliver McKinstry.</p> <p>7 Q. All right. And so it was up to Mr. McKinstry</p> <p>8 to run the team to interpret the policy?</p> <p>9 A. Yes.</p> <p>10 Q. Yes?</p> <p>11 A. Mm-hmm, yes.</p> <p>12 Q. Who did Mr. McKinstry report to? Who was his</p> <p>13 supervisor?</p> <p>14 A. He reported to me.</p> <p>15 Q. Do you have any role in interpreting the</p> <p>16 Disaster Relief Policy?</p> <p>17 A. There -- yes, I did get a couple of questions</p> <p>18 about it, and I responded about.</p> <p>19 Q. No, that's -- that's what you did. I'm</p> <p>20 talking about your role. I'm not saying -- I didn't ask</p> <p>21 you whether -- did you respond to a couple of inquiries</p> <p>22 during all of this, sir. I asked you, what is your role</p> <p>23 as vice president? Do you have a role in interpreting</p> <p>24 the policy on January 1, 2020?</p> <p>25 And I specifically picked January 1, 2020,</p>
<p style="text-align: right;">Page 119</p> <p>1 people who were assigned to interpret the Disaster</p> <p>2 Relief Policy?</p> <p>3 A. Yeah, that -- so my team -- which would be</p> <p>4 myself, Shawn Zuckerman, Oliver McKinstry -- we have an</p> <p>5 analyst on the team, Alejandro Bruner-Solas -- those</p> <p>6 would be the primary folks, if there were questions and</p> <p>7 people didn't immediately know the answer, where we</p> <p>8 would be able to respond and interpret the policy.</p> <p>9 Q. Okay. Was there any confusion in your mind on</p> <p>10 January 1, 2020, when this policy came out that we were</p> <p>11 looking at that was on -- that was found -- started on</p> <p>12 TRC 000049 through 50 -- was there any confusion or</p> <p>13 vagueness in your mind about what or how the policy</p> <p>14 worked?</p> <p>15 A. Can someone point the policy?</p> <p>16 Q. Say again?</p> <p>17 A. I don't see a policy. I just see everybody's</p> <p>18 faces.</p> <p>19 Q. No. You know what policy we're talking about.</p> <p>20 We're talking about the Disaster Relief Policy. And I'm</p> <p>21 asking -- I'm taking you back to a point in time,</p> <p>22 Mr. Eaves. And that point in time is January 1, 2020.</p> <p>23 The reason is because that is the point in</p> <p>24 time that the Disaster Relief Policy, that we've put on</p> <p>25 the board here for you earlier -- that's the time that,</p>	<p style="text-align: right;">Page 121</p> <p>1 Mr. Eaves, because I wanted to avoid you launching off</p> <p>2 into people that you talked to during the COVID-19</p> <p>3 crisis. January 1, 2020, there may have been a crisis;</p> <p>4 but certainly we weren't really -- it wasn't on our</p> <p>5 plate in the United States, if you will. Let me go back</p> <p>6 to my question.</p> <p>7 On January 1, 2020, what was your role in</p> <p>8 interpreting the Disaster Relief Policy?</p> <p>9 A. I would not have had a role.</p> <p>10 Q. Okay. Other than perhaps the people who</p> <p>11 interpreted the policy reported to you?</p> <p>12 A. Correct.</p> <p>13 Q. All right. Did you understand how the</p> <p>14 Disaster Relief Policy worked on January 1, 2020?</p> <p>15 A. No.</p> <p>16 Q. I'm sorry. I didn't hear your answer.</p> <p>17 A. No. I would not have been able to recite that</p> <p>18 verbatim, no.</p> <p>19 Q. Okay. When did you learn how the Disaster</p> <p>20 Relief Policy works?</p> <p>21 A. I looked at it during -- when we got our</p> <p>22 initial questions from the COVID-19 crisis.</p> <p>23 MR. JONES: Now, Christina, 3376.</p> <p>24 Q. (By Mr. Jones) This is a -- this is --</p> <p>25 MS. HENRY: Sorry. I realize it's small, but</p>

<p style="text-align: right;">Page 122</p> <p>1 I'm doing it so you can see the Bates number. And then</p> <p>2 I'd like to make it bigger, if you're all right with it.</p> <p>3 Q. (By Mr. Jones) Can you read it?</p> <p>4 THE WITNESS: Thank you, Christina. I'm</p> <p>5 prepared for you to make it bigger now. Thank you.</p> <p>6 Q. (By Mr. Jones) All right. This is</p> <p>7 DaVita_003376. It's one of about 7,600 documents that</p> <p>8 were produced to us today, most for the first time.</p> <p>9 MS. PETERSEN: Is it 75 or 76? 'Cause on the</p> <p>10 tab it says 003375.</p> <p>11 MR. JONES: I know I said 70- -- let me start</p> <p>12 over.</p> <p>13 Q. (By Mr. Jones) This is found at DaVita</p> <p>14 003376, part of around 7,800 documents that were</p> <p>15 provided to us today, some for the first time.</p> <p>16 MR. JONES: Scroll back down, Christina.</p> <p>17 Q. (By Mr. Jones) Now, this is Abigail</p> <p>18 Fontanilla, March 16, 2020. And have you seen this</p> <p>19 email before, sir?</p> <p>20 A. I -- I would have reviewed them. I can't say</p> <p>21 I specifically recall this one, though, sir.</p> <p>22 Q. Let me read it to you. "I was scrolling</p> <p>23 through our Teammate Handbook and came up with a</p> <p>24 question. Governor of Virginia, Mr. Ralph Northam and</p> <p>25 our president Mr. Donald Trump have declared, quote,</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. (By Mr. Jones) Okay. But she says, "Does it</p> <p>2 not apply to our situation right now?"</p> <p>3 As a thinking person, does that lead you to</p> <p>4 believe that perhaps she thinks that it does apply to</p> <p>5 our situation right now?</p> <p>6 A. I -- I think she's got a question about it,</p> <p>7 yes.</p> <p>8 Q. Yeah. And so -- and she's obviously read the</p> <p>9 same section of the pay practices for non-exempt</p> <p>10 teammates of the DaVita Disaster Relief Policy that I</p> <p>11 read, right?</p> <p>12 A. Yes, I -- based on the language she's using</p> <p>13 here, it looks like she looked at that policy, yes.</p> <p>14 MR. JONES: Christina, let's go to 003375 and</p> <p>15 scroll all the way to the bottom. There you go. At the</p> <p>16 bottom, we have now Ms. Lindsay Burns on March 18, 2020,</p> <p>17 to Jeremy Eaves -- that's you, Mr. Eaves -- "Subject:</p> <p>18 FW" -- I guess that's forward -- "Compensation."</p> <p>19 "Hey Jeremy, this is an example where TMs are</p> <p>20 referencing an emergency situation. We explained that</p> <p>21 we are not paying hazard pay but this may be where</p> <p>22 confusion is coming from." Do you remember receiving</p> <p>23 this email, Mr. Eaves?</p> <p>24 A. I -- I do -- I do remember I -- I saw this</p> <p>25 email.</p>
<p style="text-align: right;">Page 123</p> <p>1 unquote, a state of emergency last week.</p> <p>2 "In Section 4 of Pay Practices, it states that</p> <p>3 'if a designated facility is open during the emergency</p> <p>4 time frame, teammates who report to their location and</p> <p>5 work their scheduled hours will be paid premium pay for</p> <p>6 all hours worked.</p> <p>7 Unless state law requires otherwise, premium</p> <p>8 pay will be one and one half times the teammates base</p> <p>9 rate of pay,' close quotes. Does it not apply to our</p> <p>10 situation right now? Specially with all other kinds of</p> <p>11 clinics and businesses are closed due to COVID 19."</p> <p>12 Did I read that correctly?</p> <p>13 A. You did.</p> <p>14 Q. Now, here's a question from Mr. Abigail</p> <p>15 Fontanilla. And if you read it as a thinking person, it</p> <p>16 appears that Abigail, clinical administrative assistant/</p> <p>17 patient care technician for DaVita, has read the pay</p> <p>18 practices for non-exempt teammates -- that paragraph</p> <p>19 that we went over before we took the break.</p> <p>20 Apparently, she read it the same way I did.</p> <p>21 Is that how you read this email?</p> <p>22 MS. PETERSEN: Objection. Calls for</p> <p>23 speculation.</p> <p>24 A. Mr. Jones, I read this as a question that we</p> <p>25 would typically get for clarification.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Did you see this email when it came in?</p> <p>2 A. From Lindsay, yes, I did. And I --</p> <p>3 Q. Who is Lindsay Burns?</p> <p>4 A. Lindsay is a director on our operations</p> <p>5 innovation team. And she was set up to run the help</p> <p>6 desk for the influx of questions we have related to the</p> <p>7 COVID-19 pandemic.</p> <p>8 Q. Okay. She sent this to you as an example,</p> <p>9 where TMs -- that stands for teammates -- are</p> <p>10 referencing an emergency situation and may be where the</p> <p>11 confusion is coming from.</p> <p>12 Is that what you thought, when you saw her</p> <p>13 email?</p> <p>14 A. That's what I read, yes. That's what I</p> <p>15 thought at the time.</p> <p>16 Q. So then you write back to her about 29 minutes</p> <p>17 later. You say, "Ah, I see. Okay. Quote, the Disaster</p> <p>18 Relief Policy provides for pay continuance during an</p> <p>19 emergency time frame when a declared emergency or</p> <p>20 natural disaster prevents teammates from performing</p> <p>21 their regular duties, close quotes.</p> <p>22 "Pay practice for non-exempt TMs as defined in</p> <p>23 the pay practices policy." And these are all caps.</p> <p>24 "Facility closed. Facility opens late or closes early.</p> <p>25 Facility remains open but teammates not able to come</p>

<p style="text-align: right;">Page 126</p> <p>1 into work (e.g." -- meaning, for example -- "roads 2 blocked, gas shortages). Teammates not able to work -- 3 use PTO, and approved by supervisor. Teammates able to 4 make it in and get to the facility are paid at 1.5 or as 5 defined by state law. 6 "With this pandemic, teammates are not 7 disrupted in their abilities to perform their regular 8 duties. All facilities remain open (you may get 9 pushback that we closed the CBOs -- but that is not the 10 case -- those offices remain open and we are encouraging 11 TMs to work from home). I hope that helps. J." 12 Did you write those words, sir? 13 A. Yes. 14 Q. Now, I want to take you to the pay practices 15 for non-exempt TMs as defined in the pay practices 16 policy. And the two bullet points that are indented, 17 the first says, "Teammates not able to work -- use PTO, 18 and approved by supervisor." 19 Was that the policy, when you wrote this? 20 A. Yes. 21 Q. "Teammates able to make it in and get to the 22 facility are paid 1.5 or as defined by state law." Was 23 that the policy, when you wrote this? 24 A. Yes. 25 Q. Now, in this she writes, "Okay. Thank you. I</p>	<p style="text-align: right;">Page 128</p> <p>1 I didn't ask. All right. And I think you know that, 2 Mr. Eaves. So we're going to back up. I'm going to ask 3 you again. 4 If you were then in an emergency time frame -- 5 and so designated facility -- one of the teammates are 6 not able to make it in to work, they get to claim PTO; 7 right? 8 A. During an emergency time frame, correct. 9 Q. But if a teammate's able to make it in and 10 gets to the facility, they're paid time and a half; 11 right? 12 A. During an emergency time frame, yes. 13 Q. All right. So that's the policy of DaVita. 14 In order to know whether a specific 15 employee -- whether DaVita would agree to pay a specific 16 employee, we've got to go and look at the emergency time 17 frame; right? 18 A. Correct. If one exists. 19 Q. If one exists. But if one exists and a 20 teammate's able to make it in and get to their facility 21 and works their scheduled hours, they're entitled to 22 receive time and a half; right? 23 A. Correct. 24 Q. Now, does DaVita reserve the right to renege 25 on that employee?</p>
<p style="text-align: right;">Page 127</p> <p>1 am going to work with Mandy to use some of the talking 2 points she had on the VOV call on Tuesday to remind 3 people that they are essential. Thanks." 4 What does "VOV" stand for? 5 A. Voice of the Village. 6 Q. All right. Now, you write at the bottom, 7 "With this pandemic, teammates are not disrupted in 8 their ability to perform their regular duties." Okay? 9 But I want to know what you mean -- I want to ask you 10 what you mean by that. But here's my question. It's 11 more focused, on this specific. 12 The fact is, if a teammate is working at a 13 facility or a business office that is within an 14 emergency time frame -- so it is a facility or a 15 business office within a designated emergency time 16 frame -- and that teammate is not able to work, they use 17 their PTO. That's what the pay practices say? 18 A. Mm-hmm. 19 Q. They can't make it in to work, right? 20 A. Yep. 21 Q. But if they can make it in to work, they get 22 paid time and a half; true? 23 A. Not nec- -- not in that situation, sir. The 24 Disaster Relief Policy was never enacted. 25 Q. Okay. But, see, you want to answer a question</p>	<p style="text-align: right;">Page 129</p> <p>1 That if the employee -- again, during the 2 emergency time frame, that employee is able to make it 3 in and gets to the facility, works their scheduled 4 hours, they look around -- they say, "DaVita, pay me 5 time and a half." 6 Does DaVita reserve the right to renege on 7 that right to pay time and a half? 8 MS. PETERSEN: Object, to the extent that 9 calls for a legal conclusion. 10 You can answer. 11 A. If the Disaster Relief Policy is in effect and 12 there's an emergency declaration on that, DaVita would 13 reserve the right to be able to move those dates, if 14 it's no longer in existence. I can give you an example. 15 Q. (By Mr. Jones) No, I don't want that example, 16 Mr. Eaves. I want to use my example. See, you're -- 17 there you go again, and I'm older than that. We've been 18 here for hours, and you know I'm not going to let you 19 get away with that. I want you to answer my question, 20 not your question. Okay? 21 Now, let's go back over it again. During an 22 emergency time frame, the teammate that's able to make 23 it in and get to the facility, they work their scheduled 24 hours, they're entitled to receive time and a half, 25 aren't they?</p>

<p style="text-align: right;">Page 130</p> <p>1 A. Yes, during an emergency time frame.</p> <p>2 Q. Yeah. And DaVita did not reserve to itself</p> <p>3 the right to say, "Well, you know, my policy says I'm</p> <p>4 going to pay you time and a half; but I just decided I'm</p> <p>5 not going to."</p> <p>6 Did DaVita reserve that right to itself?</p> <p>7 MS. PETERSEN: Objection, to the extent that</p> <p>8 calls for a legal conclusion.</p> <p>9 Go ahead.</p> <p>10 A. Mr. Jones, are you asking about it as it</p> <p>11 relates to COVID-19?</p> <p>12 Q. (By Mr. Jones) No. I'm noticing you -- that</p> <p>13 you listen to your -- the lawyer's objections very</p> <p>14 carefully. We're going to go through this, and we will</p> <p>15 be here until we call a judge or until I get this</p> <p>16 question answered. All right?</p> <p>17 It is a simple question, sir. And I'm going</p> <p>18 to -- I'm going to ask the court reporter to read it</p> <p>19 back, because I'm tired of asking it over again. The</p> <p>20 fact -- well, then I'll ask it a different way.</p> <p>21 Does DaVita consider itself to be bound to the</p> <p>22 promises that it makes to its employees?</p> <p>23 MS. PETERSEN: And object, to the extent that</p> <p>24 calls for a legal conclusion.</p> <p>25 Q. (By Mr. Jones) I'm not asking you for a legal</p>	<p style="text-align: right;">Page 132</p> <p>1 he's been in the Village. He's had ten years of tenure.</p> <p>2 He and I have had very limited interactions, until I</p> <p>3 started reporting in to him on or around January of</p> <p>4 2020.</p> <p>5 Q. All right. And do you know whether</p> <p>6 Mr. Gardner knew what the disaster pay policy was on</p> <p>7 March 17, 2020?</p> <p>8 MS. PETERSEN: Objection. Outside the scope</p> <p>9 of the topic for which this witness has been designated</p> <p>10 to testify. I'm uncertain if you're asking in his</p> <p>11 corporate capacity or as a (b)(1) witness.</p> <p>12 MR. JONES: I don't really care. I just want</p> <p>13 an answer. The judge --</p> <p>14 A. I do not --</p> <p>15 MR. JONES: -- will decide that.</p> <p>16 MS. PETERSEN: So my objection is that it's</p> <p>17 outside the scope.</p> <p>18 But, Mr. Eaves, you can --</p> <p>19 MR. JONES: I heard it.</p> <p>20 MS. PETERSEN: -- respond in your personal</p> <p>21 capacity.</p> <p>22 A. I do not know.</p> <p>23 Q. (By Mr. Jones) In March -- around March 17,</p> <p>24 2020, did DaVita close clinics because of the COVID-19</p> <p>25 disaster?</p>
<p style="text-align: right;">Page 131</p> <p>1 conclusion, Mr. Eaves. I just want to know what the</p> <p>2 corporate culture of DaVita is. If they say they're</p> <p>3 going to pay under these circumstances and that employee</p> <p>4 shows up for work and they work under the exact</p> <p>5 circumstances that DaVita's policies and procedures say,</p> <p>6 they're going to get paid time and a half.</p> <p>7 Does DaVita believe that it's reserved to its</p> <p>8 right to renege and not pay that employee what they</p> <p>9 promised to pay him?</p> <p>10 A. No. They would pay the time.</p> <p>11 Q. Thank you.</p> <p>12 Now, you think Mr. Kenny Gardner knew what the</p> <p>13 Disaster Relief Policy was in the middle of March 2020?</p> <p>14 MS. PETERSEN: Objection. Calls for</p> <p>15 speculation.</p> <p>16 MR. JONES: No, it doesn't. I'm asking him</p> <p>17 what he thinks.</p> <p>18 Q. (By Mr. Jones) How long have you known Kenny</p> <p>19 Gardner?</p> <p>20 A. I -- I've known Kenny for well -- years, but</p> <p>21 I -- I mean, very, very, very far removed. He -- he</p> <p>22 was --</p> <p>23 Q. I'm sorry. The last part again, very what?</p> <p>24 A. He was very far removed. So I know of Kenny.</p> <p>25 He used to be a Palmer. So I've known of Kenny since</p>	<p style="text-align: right;">Page 133</p> <p>1 A. I'm sorry. Did you say a statement, or did</p> <p>2 you ask a question?</p> <p>3 Q. I'm going to ask the question. I'll ask it --</p> <p>4 Around the middle of March 2020 -- say, around</p> <p>5 the 17th -- you know, had Davita closed any clinics</p> <p>6 because of the COVID-19 crisis?</p> <p>7 A. No.</p> <p>8 Q. Do you know what "de novo" means?</p> <p>9 A. I do.</p> <p>10 Q. What does it mean?</p> <p>11 A. It's a -- it's a new facility. So we --</p> <p>12 we've -- we built it from the ground up. It's mortar</p> <p>13 that -- it actually makes the facility.</p> <p>14 THE COURT REPORTER: I'm sorry. Can you</p> <p>15 repeat that?</p> <p>16 THE WITNESS: Which part, ma'am?</p> <p>17 THE COURT REPORTER: The answer. I didn't</p> <p>18 get -- the answer. I didn't get your answer.</p> <p>19 A. A de novo facility is a new facility that</p> <p>20 we've built. So it's a ground up facility that we've</p> <p>21 constructed.</p> <p>22 Q. (By Mr. Jones) All right. Do you know who</p> <p>23 Erica Edwards is?</p> <p>24 A. I do know Erica Edwards.</p> <p>25 Q. Who is she?</p>

<p style="text-align: right;">Page 134</p> <p>1 A. She's a vice president of people services. 2 Q. I thought you were the VP of people services? 3 A. There's multiple. She's functionally over the 4 recruiting. At the time, she would have been recruiting 5 talents and diversity and inclusion. 6 MR. JONES: Christina, 3482, please. 7 MS. HENRY: Can I have the court reporter -- 8 that last exhibit, that started 3375 to 3376, can that 9 be marked as Exhibit -- where are we -- 19? 10 THE COURT REPORTER: 20, I believe. 11 MR. JONES: 20. 12 MS. HENRY: Okay. So this will be the next 13 exhibit. 14 And I'm sorry, Craig. What was the exact 15 number again? 16 MR. JONES: 3483. 17 MS. HENRY: I think that last one should be 18 all together. It was just that one email that was all 19 together, right? 20 MR. JONES: Hang on, Christina. This is found 21 in a document that is -- was produced in globo as DaVita 22 003368 through 003373, I believe. Let me check that. 23 MS. HENRY: And I'm on 3383; is that right? 24 MR. JONES: Oh, Christina, you're going to 25 mess me up here now.</p>	<p style="text-align: right;">Page 136</p> <p>1 MS. HENRY: All right. So that will be -- 2 that will be 21. 3 MR. JONES: Then, I'm going to 3375-3376. 4 That will be as -- as Exhibit 21, right? 5 MS. HENRY: Mm-hmm. 6 (Exhibit-21 marked for identification.) 7 MS. HENRY: And I'll send these to the court 8 reporter. 9 MR. JONES: I'm saving them right here, 10 Christina. 11 MS. PETERSEN: And I'm not going to lie. 12 I'm -- I turned around as to which documents are which 13 exhibits, so it'll get sorted when we see them. But if 14 we can refer to Bates numbers as we're moving forward, 15 that will be helpful. 16 MR. JONES: Yeah. 17 Where are we, Christina? 18 MS. HENRY: So the one you're trying to get me 19 to pull up right now is 3383; is that correct? 20 MR. JONES: No, that one -- I think you'll 21 find it as 003477. 22 MS. HENRY: Now you want me to go to 3477? 23 Okay. 24 MR. JONES: I think that 3477 is a single 25 document, multiple pages.</p>
<p style="text-align: right;">Page 135</p> <p>1 MS. HENRY: Okay. I'll stop. It's -- mess me 2 up, too. 3 MR. JONES: 3368 through 3373. It was a 4 single -- it's a single document, Madam Court Reporter. 5 THE COURT REPORTER: So will that be marked as 6 Exhibit 20? 7 MR. JONES: Yes, please. 8 MS. HENRY: Yes. 9 (Exhibit-20 marked for identification.) 10 MS. PETERSEN: For clarification, for 11 Exhibit 19, do you mind telling me the numbers -- the 12 Bates number for Exhibit 19? Is that 3375 and 76? 13 MS. HENRY: The 19 is the ones that were 14 already sent to you. That was the -- wasn't that the 15 amended 30(b)(1)? 16 MS. PETERSEN: Okay. Have any other emails 17 been admitted into evidence? 18 MS. HENRY: I don't think we've seen any other 19 ones, but the one we just did; right? 20 MR. JONES: Right. 21 MS. PETERSEN: So perhaps a -- more of a 22 clarifying question is: Bates number 3375 and 3376, 23 which were just testified to, is that an exhibit? 24 MR. JONES: Yeah. And I put them in there. 25 Hang on.</p>	<p style="text-align: right;">Page 137</p> <p>1 MS. HENRY: Okay. That's where I'm going now. 2 MR. JONES: Hold on. And it starts at 3477, 3 Christina, and it goes to 3486. 4 MS. HENRY: All right. I have that up. 5 MR. JONES: Okay. 6 THE COURT REPORTER: What exhibit is this 7 going to be? 8 MS. HENRY: This will be number 22. 9 (Exhibit-22 marked for identification.) 10 MR. JONES: Let's -- yeah, let's introduce it 11 before we -- as Exhibit 22. 12 MR. JONES: All right. Christina, go to 13 3484 -- excuse me -- 3482. 14 Q. (By Mr. Jones) All right. Do you see here -- 15 I want you to look at the email that starts from Erica 16 Edwards, Monday, March 16, 2020, 9:57, to Kenny Gardner, 17 Debbie Wolfe, Carley St. Clair; Interview Process, 18 Recommendations, Update. 19 Do you see that? 20 A. I do. 21 Q. All right. Now, Ms. Edwards is VP. She's in 22 charge of recruiting, right? 23 A. Yes. 24 Q. And I want to go to the next page, because 25 what she's doing here is -- this is a -- she's sending</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 Mr. Gardner and some other folks this report, and it 2 goes on to the next page. 3 Do you see where it says, "Open questions to 4 task force"? Do you see that? 5 A. I do not. 6 MR. JONES: I think you changed it, Christina. 7 MS. HENRY: Did I skip a page? 8 A. I see it now, the sentence there, yeah. 9 MR. JONES: You want to go -- you really want 10 to actually go forward to 84 -- to 83. That's 82. You 11 want to go to 83, Christina. 12 MS. HENRY: Oh, okay. 13 MS. PETERSEN: Where -- we seem to be in the 14 middle of this document. 15 MR. JONES: We are. That's where the email is 16 found. 17 MS. PETERSEN: Okay. Just -- 18 MS. HENRY: I went -- I went the wrong way. 19 So if I back up, it's 82. And now it goes down to 83. 20 MR. JONES: Got you. 21 Q. (By Mr. Jones) So you see, though -- I want 22 to call your attention -- it says, "Updated Guidance." 23 And then she has these two paragraphs. If we go down to 24 paragraph 2, subsection (a), subsection (i) -- excuse 25 me -- subsection (ii), sub subsection (1). Do you</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Why don't we do that? 2 Q. Hang on. Because it's about nine pages long, 3 but it's got all -- 4 MS. PETERSEN: I'll send the full exhibit to 5 the witness now. 6 MR. JONES: Yeah, let's take a break right 7 here. 8 (Recess taken from 4:50 p.m. to 5:04 p.m.) 9 MR. JONES: All right. Christina, let's go to 10 our document. 11 MS. HENRY: Okay. Just a second. Okay. 12 MR. JONES: All right. That's 3482, "Open 13 questions to task force." Go to the next, 83, 14 Christina. 15 Q. (By Mr. Jones) You had a chance to review 16 this part of the email, sir? 17 A. I did. Super helpful. Thanks for the time. 18 Q. You're quite welcome. All right. 19 MR. JONES: Let's go to 84, Christina. All 20 right. Let's go back to 83. 21 Q. (By Mr. Jones) My question is this, 22 Mr. Eaves. You see under -- it says, under "Hiring 23 Manager Interview Options" -- you see that? 24 A. I do. 25 Q. Do you know what -- do you know what Ms. Wolfe</p>
<p style="text-align: right;">Page 139</p> <p>1 follow me? 2 The (ii) says, "Off-hours live interview in 3 clinic (revisit with taskforce). (1) DeNovos and closed 4 clinics prioritized for cohort hiring." 5 Do you know what that means? 6 A. Give me a second to review this, just so I can 7 understand the context. 8 Q. Absolutely. 9 THE WITNESS: Ms. Henry, I'm wondering if it 10 would be possible for me to just understand the context 11 of where this is coming from. The recruiting guidance 12 seems a little out of place, so I'm just trying to 13 understand. I -- I do -- 14 MS. HENRY: Do you want me to go to 82 again? 15 THE WITNESS: Well, if I could just see from 16 the inception of when the email started, that might be 17 able to help me answer Mr. Jones' question. 18 MS. PETERSEN: And the page -- unless I'm 19 looking at the wrong thing, I think there's also an 20 earlier portion of the chain. 21 A. So am I reading from the documents now or -- 22 MS. HENRY: If you want -- I'm -- 23 Q. (By Mr. Jones) I don't know what you want, 24 Mr. Eaves. You want to read the whole thing, we'll 25 email it to you; take a break.</p>	<p style="text-align: right;">Page 141</p> <p>1 is talking about right there? 2 A. I -- I believe this is actually written by 3 Erica Edwards, correct? 4 Q. I'm sorry. That's correct. 5 A. I -- I do understand the context of this. 6 Q. Okay. What was meant by "DeNovos and closed 7 clinics prioritized for cohort hiring"? 8 A. Yeah, so -- and please let me give some 9 context, because it will be helpful to understand this. 10 We were trying to do an infection protocol, so we 11 weren't infecting patients or teammates. So one of the 12 concerns became -- people who were typically going to 13 the clinics, who might not adhere to some of the PPE 14 standards that were required -- so that we weren't 15 transmitting the disease. 16 And so there was a discussion about -- saying 17 we know we have live interviews that take place in our 18 clinics all the time. And there was a lot of discussion 19 around whether or not we allowed those to happen. 20 Ultimately, we made the decision that we wouldn't allow 21 that to happen. So they were talking about, how do we 22 interview teammates. 23 We still need to hire folks. It's the normal 24 course of business, and we need to make sure they're 25 getting interviewed here. So specific to that one,</p>

<p style="text-align: right;">Page 142</p> <p>1 Mr. Jones, you -- you can see it's -- I'm sorry -- so</p> <p>2 in -- in (a), they're saying if -- if there still is a</p> <p>3 preference for live interviews, one, off-site interviews</p> <p>4 are preferred.</p> <p>5 Another option would be to do off-hours live</p> <p>6 interviews, so when nobody was there conducting</p> <p>7 business. And specific to line item number 1, it would</p> <p>8 be that de novos or closed clinics that were prioritized</p> <p>9 for cohort hiring could actually be used.</p> <p>10 What it means by closed clinics is, we might</p> <p>11 have a clinic that would only operate on given days --</p> <p>12 so Monday, Wednesday, or Friday. We might prioritize</p> <p>13 those so that we could do cohort hiring, or we could</p> <p>14 bring in groups of patients who were with COVID. But</p> <p>15 the -- that's the purpose of the closed clinics.</p> <p>16 Q. All right. Thank you.</p> <p>17 MR. JONES: Pull up, Christina, 003131.</p> <p>18 MS. HENRY: Okay.</p> <p>19 MR. JONES: We'll attach this as --</p> <p>20 Where are we, Madam Court Reporter?</p> <p>21 MS. HENRY: 3131?</p> <p>22 MR. JONES: Yep.</p> <p>23 THE COURT REPORTER: Next exhibit is 23.</p> <p>24 MS. HENRY: And that'll be 23.</p> <p>25 MR. JONES: Just a second. I've got to clear</p>	<p style="text-align: right;">Page 144</p> <p>1 the Disaster Relief Policy did not apply to the COVID-19</p> <p>2 crisis?</p> <p>3 A. There is no one that decided that. It just --</p> <p>4 it wasn't a discussion, with regard to how the policy</p> <p>5 was implemented.</p> <p>6 MR. JONES: Put it back up on the screen,</p> <p>7 Christina. Go to 3131, please.</p> <p>8 Q. (By Mr. Jones) You see on the bottom here it</p> <p>9 says March 17, Tuesday, 2020, Debbie Wolfe to Kenny</p> <p>10 Gardner, Carley St. Clair, Erica Edwards; Subject:</p> <p>11 Interview Process Recommendations.</p> <p>12 "Essentially, TMs are beginning to ask if the</p> <p>13 disaster relief policy would be in effect given the fact</p> <p>14 that the President has declared an emergency. Below is</p> <p>15 an excerpt from the policy outlining conditions for 50</p> <p>16 percent premium pay.</p> <p>17 "Some feel it could be interpreted that all</p> <p>18 facilities should get 50 percent premium pay given the</p> <p>19 national disaster declaration. Questions have surfaced</p> <p>20 from Titan and now Endeavor."</p> <p>21 Do you see where I read that?</p> <p>22 A. I do.</p> <p>23 Q. Now, that was at -- on 9:53 a.m. on</p> <p>24 March 17th. Kenny Gardner replies at 10:55 a.m.</p> <p>25 Can you read his answer, please?</p>
<p style="text-align: right;">Page 143</p> <p>1 my screen here. All right.</p> <p>2 Christina, start on -- in that document, start</p> <p>3 on 3136.</p> <p>4 MS. HENRY: Okay. Okay.</p> <p>5 Q. (By Mr. Jones) Do you see at the bottom of</p> <p>6 the page, this is -- that's Erica -- that's Erica</p> <p>7 Edward's email that you just familiarized yourself with.</p> <p>8 All right?</p> <p>9 MR. JONES: Go to the next page, if you want</p> <p>10 to identify, Christina.</p> <p>11 MS. HENRY: Oh, okay.</p> <p>12 MR. JONES: Back to 3136. All right. That's</p> <p>13 fine, Christina. Let's take that down -- let's attach</p> <p>14 that document as Exhibit 23. Is that right?</p> <p>15 MS. HENRY: So do you want the whole exhibit</p> <p>16 from --</p> <p>17 MR. JONES: Yeah. Yeah, let's do the whole</p> <p>18 exhibit.</p> <p>19 MS. HENRY: From 3131 to 3137?</p> <p>20 MR. JONES: I do.</p> <p>21 MS. HENRY: And that's Exhibit 23.</p> <p>22 (Exhibit-23 marked for identification.)</p> <p>23 MR. JONES: Yep. All right. Pull it down,</p> <p>24 Christina. Thank you.</p> <p>25 Q. (By Mr. Jones) Mr. Eaves, who decided that</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. PETERSEN: Objection, to the extent that</p> <p>2 this contains information which we previously disclosed</p> <p>3 was inadvertently privileged information that was</p> <p>4 provided in this version of the document.</p> <p>5 MR. JONES: I don't think copying a lawyer</p> <p>6 makes it privileged. But, I mean, you can reserve that.</p> <p>7 I'm going to ask these questions. All right?</p> <p>8 Q. (By Mr. Jones) Now, why don't you read his --</p> <p>9 Kenny Gardner's answer?</p> <p>10 A. I'm sorry. You want me to do that?</p> <p>11 Q. I do.</p> <p>12 A. Okay. "The answer is no. But I'm copying</p> <p>13 Colleen so that it is on her radar. I don't want to</p> <p>14 make sure the President's declaration does not conflict</p> <p>15 with our own policy."</p> <p>16 Q. "Kenny."</p> <p>17 Now, do you know what happened between</p> <p>18 9:53 a.m. on March 17th and 10:55 a.m. on March 17th</p> <p>19 that made Mr. Gardner say that the answer was no, that</p> <p>20 the COVID-19 -- excuse me -- that the emergency disaster</p> <p>21 policy does not apply to the COVID-19 situation?</p> <p>22 A. No, I don't.</p> <p>23 Q. Do you still maintain that no one made the</p> <p>24 decision that -- that the Disaster Relief Policy does</p> <p>25 not apply to the COVID-19 crisis?</p>

<p style="text-align: right;">Page 146</p> <p>1 A. That's correct.</p> <p>2 Q. It does appear that Mr. Gardner made that</p> <p>3 decision. Wouldn't you read it that way?</p> <p>4 A. I think I looked at previous documentation,</p> <p>5 where I answered similarly.</p> <p>6 Q. I don't know what your answer means. Why</p> <p>7 don't you try again?</p> <p>8 A. Can you please ask the question again?</p> <p>9 Q. Sure. It looks like Mr. Gardner said, "The</p> <p>10 answer is no," when Debbie Wolfe asked him that -- from</p> <p>11 the policy outlining -- it said, "Below is an excerpt</p> <p>12 from the policy outlining conditions for 50 percent</p> <p>13 premium pay.</p> <p>14 "Some feel it could be interpreted that all</p> <p>15 facilities should get 50 percent premium pay given the</p> <p>16 natural disaster declaration. Questions have surfaced</p> <p>17 from Titan and Endeavor." He responds, "The answer is</p> <p>18 no."</p> <p>19 That sure sounds to me like Mr. Gardner made</p> <p>20 the decision right then, some time between 9:53 a.m. and</p> <p>21 10:55 a.m. Does it look like that to you, Mr. Eaves?</p> <p>22 MS. PETERSEN: Objection. It mischaracterizes</p> <p>23 the document.</p> <p>24 MR. JONES: Well, hang on. I can characterize</p> <p>25 or mischaracterize all I want to, Ms. Petersen. That</p>	<p style="text-align: right;">Page 148</p> <p>1 email differently than I do?</p> <p>2 A. I -- I think you're asking me to speculate</p> <p>3 about that, but Kenny --</p> <p>4 Q. No, I'm not. Hold on, hold on, hold on. Wait</p> <p>5 a minute. Hold on. You're listening to the lawyer and</p> <p>6 then asking me to restate the question, because you're</p> <p>7 chewing off of what she is saying. That is not</p> <p>8 appropriate. We're in -- you are the equivalent of --</p> <p>9 in a United States District Court, Mr. Eaves. And I</p> <p>10 would appreciate it --</p> <p>11 Mr. Eaves, when asked what is man's greatest</p> <p>12 mistake, the Buddha said, "He thinks he has time." I'm</p> <p>13 going to respect your time. Please respect mine, and</p> <p>14 don't do that again. I'm asking you a simple question.</p> <p>15 I'm allowed to ask you if you read this email the same</p> <p>16 way I did.</p> <p>17 I read it that Mr. Gardner, between</p> <p>18 9:53 a.m. when he received this email on March 17, 2020,</p> <p>19 and 10:55 a.m. when he replied back, that he was</p> <p>20 responding to Ms. Wolfe saying, "Some feel it could be</p> <p>21 interpreted that all facilities should get 50 percent</p> <p>22 premium pay given the natural disaster declaration" --</p> <p>23 Kenny's response, "The answer is no."</p> <p>24 It sure seems to me like he made a decision as</p> <p>25 to what the Disaster Relief Policy did or didn't apply</p>
<p style="text-align: right;">Page 147</p> <p>1 was a direct instruction to the witness. I'm going to</p> <p>2 ask you to stop doing that. I'm not going to put up</p> <p>3 with that again.</p> <p>4 MS. PETERSEN: Counsel, to the extent that</p> <p>5 you're trying to assert in your question, though, that</p> <p>6 you are reading --</p> <p>7 MR. JONES: You're doing it again,</p> <p>8 Ms. Petersen. You're doing it again.</p> <p>9 Q. (By Mr. Jones) Did you read that email</p> <p>10 differently than I did?</p> <p>11 MS. PETERSEN: Is that to the witness, sir?</p> <p>12 MR. JONES: Yes. You're not sworn in,</p> <p>13 Ms. Petersen.</p> <p>14 MS. PETERSEN: I'm aware. I'm clarifying for</p> <p>15 the witness.</p> <p>16 A. Mr. Jones --</p> <p>17 MR. JONES: You are clarifying for the</p> <p>18 witness.</p> <p>19 Q. (By Mr. Jones) Did you read that email</p> <p>20 differently than me?</p> <p>21 A. I'm unclear on your question. I was the one</p> <p>22 who read the email.</p> <p>23 Q. The question is -- I read Mr. Gardner as</p> <p>24 telling Ms. Wolfe that the Disaster Relief Policy does</p> <p>25 not apply to the COVID-19 crisis. Do you read that</p>	<p style="text-align: right;">Page 149</p> <p>1 to. Do you read it that way?</p> <p>2 MS. PETERSEN: Object to the form.</p> <p>3 A. I do not.</p> <p>4 MR. JONES: Go to the -- let's see. Go to the</p> <p>5 previous page. Keep going. Keep going. Here it is.</p> <p>6 Q. (By Mr. Jones) Debbie Wolfe, at 9:22 a.m.</p> <p>7 And she writes to Kenny Gard- -- to Carley St. Clair,</p> <p>8 Kenny Gardner, and Erica Edwards, "Subject: Interview</p> <p>9 Process Recommendations Update."</p> <p>10 She asked, "Do we have disaster pay policy on</p> <p>11 the list?" Mr. Gardner responded, "What is disaster pay</p> <p>12 policy?" Do you see that?</p> <p>13 A. I do.</p> <p>14 MR. JONES: Now, keep going, Christina. Go</p> <p>15 back to -- go back to -- there you go.</p> <p>16 Q. (By Mr. Jones) Now, it's a curious thing</p> <p>17 about this email chain.</p> <p>18 MR. JONES: All right. You can take it down,</p> <p>19 Christina.</p> <p>20 MS. PETERSEN: Was there a question?</p> <p>21 MR. JONES: No, there isn't.</p> <p>22 Q. (By Mr. Jones) Sir, did --</p> <p>23 MR. JONES: Let's put the -- Christina, let's</p> <p>24 put the Disaster Relief Policy back up on the board,</p> <p>25 please. That would be Exhibit 5. 50, Christina. Okay</p>

<p style="text-align: right;">Page 150</p> <p>1 keep that out. Okay. Now, let's go to page 49. That's 2 my mistake. 3 Now, page 49, I want to look at the -- at 4 4.12. All right. I want to go to the second sentence 5 under Disaster Relief Policy. "A declared emergency or 6 natural disaster shall be proclaimed either by the 7 President of the United States, a state Governor or 8 other elected official, or if local leadership 9 (DVP/Palmer) deems it appropriate." 10 Do you see that? 11 A. I do. 12 Q. So the policy of DaVita on January 1, 2020, 13 was there were three situations where a declared 14 emergency, for purposes of the Disaster Relief Policy, 15 could occur. 16 It was either a declared emergency or natural 17 disaster by the President of the United States, by a 18 state governor or other elected official, or if local 19 leadership of DaVita -- DVP/Palmer -- deemed it 20 appropriate. Do you see that? 21 A. Yeah. 22 Q. Okay. Now, what does DVP stand for? 23 A. Division vice president. 24 Q. Palmer is the leader of the geographical 25 region?</p>	<p style="text-align: right;">Page 152</p> <p>1 Do you see that? 2 A. I do. 3 Q. What does -- DVP, divisional vice president; 4 right? 5 A. Correct. 6 Q. GVP stands for what? 7 A. It's the same as -- it's the equivalent to a 8 Palmer. 9 Q. Say again? 10 A. It's equivalent to the title of Palmer. 11 Q. What does it stopped for? 12 A. Group vice president. 13 Q. And PSD? 14 A. People services director. 15 Q. And the Disaster Governance Council. Now, 16 tell me this. The -- it doesn't say there that an 17 emergency time frame is declared. It says emergency 18 time frame is identified; isn't that right? 19 A. Correct. 20 Q. Here's my question. Did the Disaster 21 Governance Council ever meet regarding COVID-19? 22 A. No, they did not. 23 Q. Have you ever known the Disaster Governance 24 Council to meet? 25 A. I do.</p>
<p style="text-align: right;">Page 151</p> <p>1 A. Correct. 2 Q. Are those the same thing? Divisional vice 3 president and Palmer, are they refer- -- they refer to 4 the same level of executive within DaVita? 5 A. They do not. They're different levels. 6 Q. Okay. All right. Palmer under DVP? 7 A. DVP under Palmer. 8 Q. Then it says, "In the event of a state or 9 federally declared natural disaster, this policy 10 provides information relative to pay practices, work 11 schedules, and facility or business office coverage." 12 Do you see that? 13 A. I do. 14 Q. "This policy supersedes and replaces any past 15 practice or policy relating to pay practices, work 16 schedules, and facility coverage" -- 17 MR. JONES: Next page, Christina, please. 18 Q. (By Mr. Jones) -- "in the event of a declared 19 emergency or natural disaster." 20 Now, let's go to "Emergency Time Frame." It 21 says, "The emergency time frame (and affected facility 22 or business office) will be identified on a case-by-case 23 basis by local leadership (DVP, GVP and PSD) and the 24 Disaster Governance Council, dependent on the severity 25 of the disaster and location."</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. When's the last time they met? 2 A. February 2021. 3 Q. Who was on the Disaster Governance Council in 4 March of 2020? 5 A. Kenny Gardner, Caitlin Moughon, and Mike 6 Staffieri. 7 Q. And what is the criteria for the Disaster 8 Governance Council to meet? 9 A. A severe disaster that would prevent people 10 from performing their normal duties at work. 11 Q. Is that criteria written down anywhere? 12 A. No, not that I'm aware of. 13 Q. And how do you know what the criteria is? 14 A. I am quoting this. I'm taking the -- 15 extraction out of the policy handbook. 16 Q. What part of the policy handbook? 17 A. Specifically where it says, "... and the 18 Disaster -- and the Disaster Governance Council, 19 dependent upon the severity and disaster of the 20 location." 21 I'm also referring to the intro sentence to 22 the beginning of the paragraph, that explains that it 23 would be in the event of a situation where teammates 24 would not be able to perform their -- their normal job 25 duties.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q. Well, the teammates -- were there any</p> <p>2 teammates within DaVita's 57,000 plus who were unable to</p> <p>3 perform their normal job duties in March 2020 because of</p> <p>4 the COVID-19 crisis?</p> <p>5 A. Sure, if they were sick and unable to come in</p> <p>6 to work. But there was nothing for an able person who</p> <p>7 needed to come in, that would prevent them from</p> <p>8 performing their -- their normal course of duties.</p> <p>9 Q. Were you aware that Ms. Prockish said that the</p> <p>10 COVID-19 prevented her from keeping her regular office</p> <p>11 hours, which were part of her regular duties? Were you</p> <p>12 aware of that?</p> <p>13 MS. PETERSEN: Objection. Misstates prior</p> <p>14 testimony.</p> <p>15 Q. (By Mr. Jones) Are you --</p> <p>16 A. I'm not aware of -- of that comment.</p> <p>17 Q. I mean, surely you're aware that there were</p> <p>18 people who -- was there anybody --</p> <p>19 Was there anyone within the DaVita teammates</p> <p>20 that didn't come to work during the early stages --</p> <p>21 let's say, March of 2020 -- because they felt that they</p> <p>22 were -- that they needed to shelter in place?</p> <p>23 A. I -- I do believe that there were questions</p> <p>24 about that, yes. I -- I think it's possible teammates</p> <p>25 may have been confused and not have come in.</p>	<p style="text-align: right;">Page 156</p> <p>1 A. None of them were closed.</p> <p>2 Q. Not one of them?</p> <p>3 A. No.</p> <p>4 Q. One in Federal Way, Washington?</p> <p>5 A. They were not closed.</p> <p>6 Q. Were you aware that Ms. Prockish told you that</p> <p>7 her office building closed down?</p> <p>8 She told us that in her deposition.</p> <p>9 A. We -- we never closed the business office. We</p> <p>10 encouraged teammates to work from home. We also</p> <p>11 realized there might be situations where we would still</p> <p>12 need to either have essential workers come in to operate</p> <p>13 some of those functional offices.</p> <p>14 And we did allow teammates to come in, if they</p> <p>15 did not have a work condition -- for example, at home --</p> <p>16 where they would have been able to be productive at</p> <p>17 work. So that remained an option.</p> <p>18 Q. Do you know whether any of the DaVita</p> <p>19 teammates were unable to come in to work because schools</p> <p>20 closed unexpectedly, and they did not have child care?</p> <p>21 A. We had teammates that did have child care</p> <p>22 issues, and we provided resources to address that.</p> <p>23 Q. Okay. I'm sure -- but, in fact, you didn't</p> <p>24 quite answer my question. And we'll try it again. I'm</p> <p>25 going to ask you to listen carefully, Mr. Eaves. Answer</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. What do you mean "confused"? I mean, if</p> <p>2 they're told to shelter in place, why would they be</p> <p>3 confused?</p> <p>4 A. Yeah, it was -- it was a fluid situation. And</p> <p>5 so I think there were reactions to -- "Oh, my gosh.</p> <p>6 We've been told to stay at home." The clarity around</p> <p>7 that was there were waivers for health care workers to</p> <p>8 come in, so that they could continue to treat sick</p> <p>9 patients.</p> <p>10 Q. Not all teammates are health care workers, are</p> <p>11 they?</p> <p>12 A. Our -- other teammates would have been still</p> <p>13 able to come in, if they were not providing direct --</p> <p>14 Q. You didn't answer my question. You're</p> <p>15 answering a question you think --</p> <p>16 A. Can you repeat --</p> <p>17 Q. -- I'm going to ask. I'll be happy to.</p> <p>18 Not all DaVita teammates are health care</p> <p>19 workers?</p> <p>20 A. Correct. They're not health care workers, not</p> <p>21 all of them.</p> <p>22 Q. And by the end of March 2020, most of DaVita's</p> <p>23 business offices were closed, weren't they?</p> <p>24 A. That is not the case.</p> <p>25 Q. No? Were some of them closed?</p>	<p style="text-align: right;">Page 157</p> <p>1 my question because I'm really, really, really growing</p> <p>2 weary of having to ask you the same questions four/five</p> <p>3 times before I get a straight answer.</p> <p>4 And I'm really, really on the cusp of shutting</p> <p>5 this down and going to the judge. You know what my</p> <p>6 question is. You're an intelligent man. I've been</p> <p>7 listening to you for hours. Please answer it, so we can</p> <p>8 get out of here. Okay?</p> <p>9 Were there DaVita teammates who were not able</p> <p>10 to come in to work because their children's schools</p> <p>11 closed down unexpectedly, and they didn't have child</p> <p>12 care?</p> <p>13 A. Sir, I -- I cannot definitively say that a</p> <p>14 teammate did not come in. I -- I cannot answer that</p> <p>15 question.</p> <p>16 Q. What do you think?</p> <p>17 A. I think there's a possibility that that could</p> <p>18 have happened.</p> <p>19 Q. You think -- well, did any of DaVita's</p> <p>20 teammates -- were they unable to attend work because of</p> <p>21 the COVID- -- because the COVID-19 crisis struck, and</p> <p>22 they had a family member that was highly at risk, and</p> <p>23 they did not want to take the chance of bringing home</p> <p>24 COVID-19 and exposing that family member to the virus?</p> <p>25 A. I think that possibility could have presented</p>

<p style="text-align: right;">Page 158</p> <p>1 itself as well.</p> <p>2 Q. Were there DaVita teammates who were unable to</p> <p>3 come in to work during the COVID-19 crisis because they</p> <p>4 had an illness in the family, that prevented them from</p> <p>5 coming in to work or -- and that illness was caused by</p> <p>6 COVID-19?</p> <p>7 A. Yes, that also occurred during -- much like</p> <p>8 influenza or other communicable diseases that would</p> <p>9 occur, where people needed to provide care.</p> <p>10 Q. You think COVID was very much like other</p> <p>11 communicable diseases?</p> <p>12 A. I -- I think it was a communicable disease</p> <p>13 that was spread through respiratory droplets, yes.</p> <p>14 Q. There you go, Mr. Eaves. You're doing it</p> <p>15 again. I'm going to ask that question again. I'd like</p> <p>16 to get a straight answer.</p> <p>17 Do you think that COVID-19 was like other</p> <p>18 communicable diseases?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know of any other communicable</p> <p>21 diseases, during anyone's lifetime, that's sitting here</p> <p>22 during this deposition -- and I assure you I'm the</p> <p>23 oldest person here -- any other communicable diseases</p> <p>24 that have shut down the United States of America?</p> <p>25 A. I -- I am not aware of a communicable disease</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Counsel is a title. I want to know a person.</p> <p>2 A. I believe it was Kathleen Waters, along with</p> <p>3 Caitlin Moughon, and with contributions as well by</p> <p>4 Colleen Ludwig.</p> <p>5 Q. Who made the decision that the Disaster Relief</p> <p>6 Policy needed clarifying?</p> <p>7 And I'm talking about that decision that was</p> <p>8 made in 2020.</p> <p>9 A. Specific to COVID, with that -- with that</p> <p>10 insert?</p> <p>11 Q. Yeah.</p> <p>12 A. Ultimately, Javier Rodriguez.</p> <p>13 Q. Why did Kenny Gardner decide to take the</p> <p>14 Disaster Relief Policy out of the DaVita teammate</p> <p>15 policies and procedures manual?</p> <p>16 MS. PETERSEN: Objection. Assumes facts not</p> <p>17 in evidence.</p> <p>18 MR. JONES: I can assume any facts not in</p> <p>19 evidence I want to, Ms. Petersen. You know that. And</p> <p>20 besides, it doesn't assume facts not in evidence. You</p> <p>21 just produced me the document today that proved it. He</p> <p>22 is the one who requested that the entire policy be wiped</p> <p>23 out of the COVID-19 -- excuse me -- out of the policies</p> <p>24 and procedures manual.</p> <p>25 Q. (By Mr. Jones) Did you not know that,</p>
<p style="text-align: right;">Page 159</p> <p>1 that shut down the United States of America.</p> <p>2 Q. Or kill over half a million people?</p> <p>3 MS. PETERSEN: Counsel, this is becoming</p> <p>4 argumentative.</p> <p>5 Q. (By Mr. Jones) You can answer.</p> <p>6 A. I -- I would not -- I don't -- I don't know.</p> <p>7 I -- I would -- I would say -- I would say no. A big</p> <p>8 death count with COVID. I think -- it still continues</p> <p>9 to be.</p> <p>10 Q. Well, so who wrote the original text of the</p> <p>11 Disaster Relief Policy?</p> <p>12 A. From 2017?</p> <p>13 Q. Yep.</p> <p>14 A. I -- I'm not aware of one specific person who</p> <p>15 authored that text. I've -- I've reviewed documents</p> <p>16 that were made available to you, to try to make that</p> <p>17 determination. I've also talked -- or we have talked as</p> <p>18 an organization to teammates who remain at DaVita, who</p> <p>19 were part of that process.</p> <p>20 All of them confirmed that there was no</p> <p>21 recollection of them having any specific memory of</p> <p>22 one person writing the text for that specific policy.</p> <p>23 Q. Who wrote the addition to the Disaster Relief</p> <p>24 Policy, known as the COVID-19 crisis?</p> <p>25 A. That was constructed by counsel.</p>	<p style="text-align: right;">Page 161</p> <p>1 Mr. Eaves?</p> <p>2 MS. PETERSEN: Mr. Jones, I don't believe</p> <p>3 you're sworn in. So please stop testifying.</p> <p>4 Q. (By Mr. Jones) Did you not know that,</p> <p>5 Mr. Eaves?</p> <p>6 A. Mr. Jones, I actually believe that I made --</p> <p>7 I'm trying to think here.</p> <p>8 Q. I'm sorry?</p> <p>9 A. I think -- give me one second. I'm trying to</p> <p>10 go back with my review of documentation here. Give me a</p> <p>11 second.</p> <p>12 Q. Are you looking at notes, sir?</p> <p>13 A. No, no. Sir, I cannot remember a specific</p> <p>14 person that's made the recommendation to remove that.</p> <p>15 Q. But the recommendation has been made, correct?</p> <p>16 A. The recommendation has been made, that's</p> <p>17 correct. I just can't tie it to one person, though.</p> <p>18 But I can acknowledge that the recommendation has been</p> <p>19 made, yes.</p> <p>20 MR. JONES: Apparently I assumed right,</p> <p>21 Ms. Petersen.</p> <p>22 Q. (By Mr. Jones) Now, let me ask you this.</p> <p>23 Why? Why are they doing away with the Disaster Relief</p> <p>24 Policy?</p> <p>25 MS. PETERSEN: Objection. Foundation.</p>

<p style="text-align: right;">Page 162</p> <p>1 THE WITNESS: Chelsea, can I answer?</p> <p>2 MS. PETERSEN: Please do. My objection for</p> <p>3 the record is, simply, lack of foundation.</p> <p>4 THE WITNESS: Okay.</p> <p>5 A. Yeah, I can speak specifically, Mr. Jones, to</p> <p>6 Storm Uri and why that recommendation's been made.</p> <p>7 Q. (By Mr. Jones) To what?</p> <p>8 A. Storm Uri, which occurred in February of 2021.</p> <p>9 Q. Yeah, but I'm not interested in that. I'm</p> <p>10 interested in why -- why the Disaster Relief Policy has</p> <p>11 been taken out of the DaVita teammate policies and</p> <p>12 procedures handbook effective, I believe, in June?</p> <p>13 MS. PETERSEN: Objection. It assumes facts</p> <p>14 not in evidence. Foundation. It's just wrong.</p> <p>15 A. The policy still exists in our handbook, sir.</p> <p>16 Q. (By Mr. Jones) I understand that. And you're</p> <p>17 taking directions from the witness.</p> <p>18 Are you aware that the recommendation has been</p> <p>19 made to remove the Disaster Relief Policy from the</p> <p>20 DaVita policies and procedures manual, yes or no?</p> <p>21 A. Yes, sir, I stated that already. I have.</p> <p>22 I -- I --</p> <p>23 Q. And the decision's made to remove it, yes or</p> <p>24 no?</p> <p>25 A. That's correct. I'm -- I'm sorry.</p>	<p style="text-align: right;">Page 164</p> <p>1 like. And even if the -- the scope of the storm would</p> <p>2 start to move through the state, based on the power grid</p> <p>3 for the state of Texas, we knew there would still be</p> <p>4 rolling power outages to continue fluctuating and -- and</p> <p>5 impacting operations.</p> <p>6 When we -- we made the decision to implement</p> <p>7 the Disaster Relief Policy because it was disrupting</p> <p>8 operations and said this will be the time frame, what we</p> <p>9 realized is that there were facilities within -- within</p> <p>10 that time frame that were able to operate.</p> <p>11 And so we started to talk about, boy, for us</p> <p>12 to make a decision for that grand scale issue -- where</p> <p>13 operations was disrupted -- what was not fluid enough to</p> <p>14 actually address what we were able to do from an</p> <p>15 operations perspective.</p> <p>16 So as the storm continued to move through the</p> <p>17 state, we knew that some of those facilities could be</p> <p>18 operational again. And we made -- the discussion</p> <p>19 became, should we have this blanket policy where an</p> <p>20 emergency time frame exists, when indeed we -- we may</p> <p>21 have facilities that become operational.</p> <p>22 So the discussion was, do we have this large</p> <p>23 scale Disaster Relief Policy, when it might make much</p> <p>24 more sense for our local leadership to address what</p> <p>25 those issues look like so that they can be responsive.</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. So --</p> <p>2 A. I thought you wanted why.</p> <p>3 Q. I'm asking you why.</p> <p>4 A. Yeah, I -- I told you it was due to the</p> <p>5 experience we had with Storm Uri. I'm happy to</p> <p>6 elaborate.</p> <p>7 Q. Go ahead. I'm listening. I told you I'd give</p> <p>8 you an opportunity to explain. I just want an answer</p> <p>9 first. Okay?</p> <p>10 A. Great. Yeah, in -- in February, Storm Uri --</p> <p>11 and if I am getting too in the weeds around this, around</p> <p>12 the detail -- that was the ice storm that occurred in</p> <p>13 Texas and some of the fringes of the surrounding states.</p> <p>14 And at that time we realized that that storm would be</p> <p>15 significant enough to sit over the top of the state for</p> <p>16 a period of time.</p> <p>17 The state of Texas is quite large. That</p> <p>18 impacted a very large number of facilities. And our</p> <p>19 leaders knew that that was going to disrupt service, and</p> <p>20 it indeed did. So in addition to disrupting operations,</p> <p>21 we had to look at some of the larger scale issues that</p> <p>22 were associated with it. There were two things that</p> <p>23 were happening.</p> <p>24 Water sources were being contaminated, and</p> <p>25 there was no immediate clarity on what that would look</p>	<p style="text-align: right;">Page 165</p> <p>1 Q. So who decides whether to call a meeting of</p> <p>2 the Disaster Relief Council?</p> <p>3 A. There's --</p> <p>4 Q. I'm sorry. Disaster Governance Council.</p> <p>5 A. Oh, okay. Yeah. Thank you. There's no</p> <p>6 one person that makes the decision to, quote, unquote,</p> <p>7 convene it.</p> <p>8 Q. Are there records kept of meetings of the</p> <p>9 Disaster Governance Council?</p> <p>10 A. No, there are not.</p> <p>11 Q. Well, you know, I mean, do they meet in a</p> <p>12 boardroom normally? Do they just get on the telephone?</p> <p>13 They just chat each other up? I mean, they send emails?</p> <p>14 How does it work?</p> <p>15 MS. PETERSEN: Object to the form.</p> <p>16 A. I can speak to Storm Uri. In that specific</p> <p>17 instance, the Palmer indicated that there was going to</p> <p>18 be operational disruption. Chakilla Robinson, who sits</p> <p>19 in Galaxy, she oversees Texas and some of the states</p> <p>20 that surround it. She'd indicated that operations would</p> <p>21 be disrupted and gave a picture of that.</p> <p>22 It was sent. There's emails that indicated</p> <p>23 what the purpose was on that, with a time frame</p> <p>24 suggestion. And I believe there's email traffic that</p> <p>25 you have in your hands that will show that it was</p>

<p style="text-align: right;">Page 166</p> <p>1 approved by the members of the Disaster Governance 2 Council. 3 Q. (By Mr. Jones) All right. I'm -- tell me 4 this. 5 Why is it that the Disaster Relief Policy, in 6 particular the pay practices of the Disaster Relief 7 Policy, will pay a teammate premium time if they can 8 make it to work; but they won't pay premium time if the 9 teammate makes it to work, but their hours have been 10 changed? 11 A. You know, hours being changed does not mean 12 that your job duties have been changed. You may need to 13 be flexible with that, but that doesn't mean that your 14 job duties have changed. There might need to be some 15 flexibility with that. 16 Q. I don't think that answered my question. 17 Why is it that the Disaster Relief Policy 18 calls for the payment of premium pay to people who make 19 it to their facility, where they work and work their 20 scheduled hours; but they don't pay premium pay to 21 people who make it to the facility, that they work and 22 work their scheduled hours that are either earlier or 23 later than they normally work? 24 A. I'm having trouble following the question and 25 the scenario, for me to apply an answer.</p>	<p style="text-align: right;">Page 168</p> <p>1 happy to answer the question, but I think the better 2 reference point would -- for me, would be the actual 3 exhibit with the text from the policy. 4 Q. (By Mr. Jones) Well, I know. But, see, what 5 you wrote right here is important, Mr. Eaves, because 6 what you wrote right here is your interpretation of the 7 policy. 8 So I can read the policy myself. We have 9 already established that I read it and you read it 10 differently. I've already established that at least one 11 Palmer, probably two, and at least one teammate read it 12 the way that I read it. 13 Now, I'm going to talk about your 14 interpretation of it, because I had difficulty getting 15 you to talk about your interpretation. You flatly told 16 me that it wasn't your job; you didn't interpret it. 17 But then I found an email where you're interpreting it. 18 MS. PETERSEN: Okay. 19 Q. (By Mr. Jones) So if you don't mind, let's 20 talk about your interpretation. 21 MS. PETERSEN: Counsel -- 22 MR. JONES: I'm sorry, Ms. Petersen. I 23 haven't finished. I'm going to give you an opportunity 24 to get on the record as soon as I do that. 25 Q. (By Mr. Jones) Because I'm not going to</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Well, let me rephrase. Let me restate it. 2 All right? 3 A. Thank you. 4 Q. Hold on one sec. 5 MR. JONES: Let's put out 3375, Christina. 6 All right. Back it up a little bit. There you go. 7 Q. (By Mr. Jones) Do you remember this email, 8 Mr. Eaves? I asked you about it earlier. 9 And we discussed your -- what you wrote in 10 this email, that said, "Paid practices for non-exempt 11 TMs is defined in the pay practices policy. Facility 12 closed. Facility open late or closes early. Facility 13 remains open, but teammates are not able to come in to 14 work -- road -- roads blocked, gas shortages." 15 So let's stop right there. If the facility 16 is closed, the teammates get regular pay; right? 17 MS. PETERSEN: Asked and answered. 18 Q. (By Mr. Jones) True? 19 A. Yes. 20 Q. If the facility opens late or closes early, 21 and the employee shows up and works these changed hours, 22 the employee gets regular time; right? 23 MS. PETERSEN: Same objection. 24 A. And -- and I'd like to ask a question. You 25 know, my -- my email is kind of a summary here. I'm</p>	<p style="text-align: right;">Page 169</p> <p>1 change my question for you, and I'm not going to ask you 2 about the documents you want to talk about. 3 MS. PETERSEN: My patience is -- 4 MR. JONES: Ms. Petersen? 5 MS. HENRY: I think she froze. 6 MR. JONES: Sometimes Zoom is like being on a 7 bad episode of the Twilight Zone. Let's see if she'll 8 come back around. 9 MS. HENRY: She must realize she froze, right? 10 MR. JONES: Oh, yeah. I'm sure she does. 11 When this happens, Mr. Eaves, we just don't go 12 forward. All right? And it happens more often than we 13 would like, so -- to everybody who does it. 14 Margo, are you still there? 15 MS. JASUKAITIS: I am here. I can check in 16 with Chelsea. 17 MR. JONES: Would you, please? And let her 18 know I'm assuming she knows that she is no longer on the 19 Zoom call. 20 MS. JASUKAITIS: I would assume the same, but 21 I'll shoot her an email now to confirm. 22 MS. PETERSEN: There we go. Sorry. I -- I 23 think I got kicked out mid-sentence. I don't know what 24 point you all heard me get to. 25 MR. JONES: You said that your patience was --</p>

<p style="text-align: right;">Page 170</p> <p>1 and that's where you left.</p> <p>2 MS. PETERSEN: Patience has run out. In the</p> <p>3 same way that you were asking me to streamline</p> <p>4 objections, I'm asking you to please streamline the</p> <p>5 commentary. And let's just get straight to the</p> <p>6 questions.</p> <p>7 MR. JONES: And I'm going to tell you this,</p> <p>8 Ms. Petersen. Mr. Eaves, although he may not even know</p> <p>9 it, is being a very difficult witness. All right? And</p> <p>10 I want my questions answered.</p> <p>11 We've taken enough depositions. You know,</p> <p>12 I'll stay here until the roof falls in. But I'll get my</p> <p>13 questions answered, if we've got to go to the judge. So</p> <p>14 I'm going to go back to where we were. All right?</p> <p>15 Q. (By Mr. Jones) Now, you can --</p> <p>16 MR. JONES: Christina, are you still with us?</p> <p>17 Put it back up.</p> <p>18 Q. (By Mr. Jones) So I want to ask you about</p> <p>19 your email. I don't want to ask you about the policy,</p> <p>20 because your email is a little different from the</p> <p>21 policy. But this is your summary of it. Okay?</p> <p>22 MS. PETERSEN: Is there a question pending?</p> <p>23 MS. HENRY: Just -- just a second.</p> <p>24 MR. JONES: I'm waiting for the document,</p> <p>25 Ms. Petersen.</p>	<p style="text-align: right;">Page 172</p> <p>1 emergency or natural disaster. And of course there's</p> <p>2 the predicate, you know, the emergency time frame is</p> <p>3 declared.</p> <p>4 If the facility is closed, the teammate can't</p> <p>5 work, they get regular time; true?</p> <p>6 A. Mm-hmm.</p> <p>7 Q. If the facility opens late or closes early,</p> <p>8 the teammate shows up and works those changed hours,</p> <p>9 they get regular time; right?</p> <p>10 A. Yes.</p> <p>11 Q. If the teammate's not able to -- if the</p> <p>12 facility is open and the teammate can't make it in to</p> <p>13 work, they don't get paid at all. They've got to use</p> <p>14 PTO, or they don't get paid; right?</p> <p>15 A. (No response.)</p> <p>16 Q. Yes?</p> <p>17 A. Yes.</p> <p>18 Q. But if the facility is open and the teammate</p> <p>19 makes it into the facility, works their scheduled hours,</p> <p>20 they get premium time; right?</p> <p>21 A. Mm-hmm, yes.</p> <p>22 Q. Okay. Why did DaVita pay premium time only to</p> <p>23 the teammates who are able to make it into the facility</p> <p>24 that's open and work their scheduled hours?</p> <p>25 A. I -- I -- I understand your question. It --</p>
<p style="text-align: right;">Page 171</p> <p>1 MS. HENRY: Sorry. Just when I shut it down,</p> <p>2 I have to go all the way back out. Okay.</p> <p>3 Q. (By Mr. Jones) All right. You remember this</p> <p>4 email, Mr. Eaves; is that right?</p> <p>5 A. I do.</p> <p>6 Q. And so it lists the situations when the --</p> <p>7 for -- the pay practice for non-exempts and the Disaster</p> <p>8 Relief Policy. Now, it says here, "Facility closed.</p> <p>9 Facility open late or closes early. Facility remains</p> <p>10 open, but teammates are not able to come in to work; for</p> <p>11 example, roads blocked, gas shortages."</p> <p>12 Under that, "Teammates not able to work use</p> <p>13 PTO and approved by supervisor. Teammates able to make</p> <p>14 it in and get to the facility are paid 1.5 or as defined</p> <p>15 by state law." Okay?</p> <p>16 Why is it that the only person that's going to</p> <p>17 be paid time and a half are the ones that can make it to</p> <p>18 the facility and work the scheduled hours?</p> <p>19 A. Mr. Jones, I -- I understand what you're</p> <p>20 trying to get at. I'm sorry. I just can't answer those</p> <p>21 based on this email I'm looking at. It's just a bit of</p> <p>22 mental exhaustion. I'm sorry.</p> <p>23 Q. Well, I'll ask it in a different way, sir.</p> <p>24 Now, you realize that the Disaster Relief</p> <p>25 Policy pays if a facility's closed because of an</p>	<p style="text-align: right;">Page 173</p> <p>1 it's insensitive -- I mean, it -- it's above and beyond</p> <p>2 insensitive to say, "Listen, we realize that it is extra</p> <p>3 tough for you to potentially get in here and -- and we</p> <p>4 need you here." And so for us to have some additional</p> <p>5 incentive to motivate those teammates to come in is</p> <p>6 important.</p> <p>7 And so during those situations -- where</p> <p>8 there's this disaster, they're not performing their</p> <p>9 regular job duties, it's difficult for them to get in --</p> <p>10 we want to have that additional incentive there to say,</p> <p>11 "Hey, we got that additional half time on top of what we</p> <p>12 would normally pay you for the time to come in."</p> <p>13 Q. Okay. But, see, that's what I'm getting at.</p> <p>14 You know, that's what I just don't understand where</p> <p>15 you -- where you're getting that from.</p> <p>16 So the policy of DaVita is that if teammates</p> <p>17 are able to make it into the facility that is open and</p> <p>18 work their scheduled hours, they do not get premium pay</p> <p>19 unless they're unable to perform their regular duties.</p> <p>20 Is that your testimony?</p> <p>21 A. Sorry. Can you repeat the question?</p> <p>22 MR. JONES: Read it again, Madam Court</p> <p>23 Reporter, please.</p> <p>24 (Record as shown on page 173, lines 13 through</p> <p>25 20, read back.)</p>

<p style="text-align: right;">Page 174</p> <p>1 A. Yes. My -- my testimony is that if -- I'm 2 sorry. I'm just -- I'm not understanding the nuance of 3 what you're asking. I'm -- I'm sorry. Can we -- is it 4 possible for us to take a break? I have not eaten. I 5 have not had a chance to get any more beverage. My can 6 of drink is -- I just don't -- 7 MR. JONES: Your pleasure -- your pleasure, 8 Mr. Eaves, is our pleasure. 9 THE WITNESS: Okay. Thank you. 10 MR. JONES: Would you like a break? 11 THE WITNESS: I -- is it possible for -- I'm 12 happy to be with you throughout the rest of the night. 13 I just -- I need more than five or ten minutes. I'm 14 sorry. 15 MR. JONES: Okay. 16 MS. PETERSEN: Yeah, we -- that's on us. We 17 ought to have asked earlier, and especially when you 18 said you're exhausted. So that's on us. 19 THE WITNESS: I -- I don't -- I don't mean to 20 be difficult. But tell me when I need to be back, 21 please. 22 MS. PETERSEN: How about -- if it's -- we're 23 two minutes to 6:00, our time. How about 6:30? So you 24 can have a meal break. 25 Does that work for everybody?</p>	<p style="text-align: right;">Page 176</p> <p>1 flying are unnecessary here. We're all professionals. 2 Let's take a half an hour break. 3 (Recess taken from 5:59 p.m. to 6:39 p.m.) 4 MS. PETERSEN: So this is Chelsea Petersen. I 5 don't know if plaintiff's counsel is intending to 6 rejoin. We had agreed to reconvene at 6:30, after a 7 break. I received a message from Counsel indicating 8 that they are suspending the remainder of the 9 deposition, pending receipt of a privilege log. 10 The witness is here ready to continue 11 testifying, as are counsel for DaVita and for TRC. We 12 disagree that there is any need to suspend the 13 deposition. And we will wait on the record for 14 approximately ten minutes, to see if Counsel will 15 return; and after that point, take it up with the court. 16 (Recess taken from 6:39 p.m. to 6:41 p.m.) 17 MS. PETERSEN: Going briefly back on the 18 record to indicate that we and the witness and the 19 defendant remain here and willing to continue testimony. 20 We've received correspondence from Counsel that they are 21 suspending the deposition. And the court reporter has 22 received similar correspondence that the deposition has 23 been suspended, yet no counsel for plaintiff has 24 rejoined to put any of this on the record. 25 So again, to the extent that the purported</p>
<p style="text-align: right;">Page 175</p> <p>1 THE WITNESS: That works for me. Thank you. 2 I appreciate that. 3 Mr. Jones, are you okay with that? 4 MR. JONES: Well, there's a question on the 5 table, Mr. Eaves. And so I would ask that you don't 6 communicate with anyone about this case during the 7 break. 8 MS. PETERSEN: Do you want to cover the -- you 9 want to close out -- 10 MR. JONES: No, I don't. 11 MS. PETERSEN: -- the question that you -- 12 MR. JONES: I don't. I don't, because I 13 want -- I want to hear your answer when you come back. 14 Okay? 15 MS. PETERSEN: Counsel -- 16 MR. JONES: So -- 17 MS. PETERSEN: -- that's unnecessary, as is -- 18 MR. JONES: Yes, it is totally necessary, 19 Counsel. 20 MS. PETERSEN: No. Enough. 21 MR. JONES: You want to have -- you want to 22 have that off the record and meet -- a conversation, we 23 can have that right now, so Mr. Eaves doesn't have to 24 listen to this. 25 MS. PETERSEN: Yeah, I just -- the accusations</p>	<p style="text-align: right;">Page 177</p> <p>1 reason for suspending the deposition is with regard to a 2 privilege log, we do want to make note that there's not 3 been a single privilege objection throughout this entire 4 deposition. It's a spurious reason for suspending the 5 deposition. And we object to any form of continuation, 6 and I consider it closed. So with that, we'll close out 7 the record. 8 THE COURT REPORTER: Would the witness like to 9 waive or reserve signature? 10 MS. PETERSEN: We will reserve. 11 (Deposition concluded at 6:45 p.m.) 12 (Signature reserved.) 13 ----- 14 15 16 17 18 19 20 21 22 23 24 25</p>

Page 178	Page 180
<p>1 SIGNATURE</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury</p> <p>6 under the laws of the State of Washington that I have</p> <p>7 read my within deposition and the same is true and</p> <p>8 accurate, save and except for changes and/or</p> <p>9 corrections, if any, as indicated by me on the CHANGE</p> <p>10 SHEET page hereof.</p> <p>11 Signed in _____,</p> <p>12 Washington, on the _____ day of _____,</p> <p>13 2021.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 JEREMY MICHAEL EAVES</p> <p>19 TAKEN: May 10, 2021</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 Olivia Pennella</p>	<p>1 SEATTLE DEPOSITION REPORTERS, LLC</p> <p>2 S600 University Street, Suite 320</p> <p>3 Seattle, WA 98101</p> <p>4 (206) 622-6661 * FAX (206) 622-6236</p> <p>5 (800) 657-1110</p> <p>6 www.seadep.com</p> <p>7</p> <p>8 CHANGE SHEET</p> <p>9</p> <p>10 PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET,</p> <p>11 SHOWING PAGE, LINE AND REASON.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 CERTIFICATE</p> <p>2 STATE OF WASHINGTON)</p> <p>3) ss.</p> <p>4 COUNTY OF KING)</p> <p>5</p> <p>6 I, the undersigned Washington Certified Court</p> <p>7 Reporter, hereby certify that the foregoing deposition</p> <p>8 upon oral examination of JEREMY MICHAEL EAVES conducted</p> <p>9 via Zoom was taken stenographically before me on May 10,</p> <p>10 2021, and transcribed under my direction;</p> <p>11 That the witness was duly sworn by me pursuant</p> <p>12 to RCW 5.28.010 to testify truthfully; that the</p> <p>13 transcript of the deposition is a full, true, and</p> <p>14 correct transcript to the best of my ability; that I am</p> <p>15 neither attorney for nor a relative or employee of any</p> <p>16 of the parties to the action or any attorney or counsel</p> <p>17 employed by the parties hereto nor financially</p> <p>18 interested in its outcome.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

46 (Pages 178 to 180)

From: Jamie Wise
To: Carley St. Clair
CC: Kenzie Hassey
Sent: 3/19/2020 4:02:08 PM
Subject: RE: Disaster Relief Policy

EXHIBIT
20

Eaves
5/10/2021
Olivia Pennella, CCR

Thank you!

Jamie Wise

Executive Assistant to:

Debbie Wolfe, Vice President | People Services Operations

Tiffany Bishop, Senior Director | People Services | Total Rewards

Shannon Gibbons, Senior Director | People Services Neighborhoods

DaVita Kidney Care

2001 16th Street | Floor 17 | Denver, CO 80202

Phone #: 720.631.6096 | Cell #: 303.907.9432



From: Carley St. Clair <Carley.StClair@davita.com>
Sent: Thursday, March 19, 2020 10:01 AM
To: Jamie Wise <Jamie.Wise@davita.com>
Cc: Kenzie Hassey <Kenzie.Hassey@davita.com>
Subject: RE: Disaster Relief Policy

Kenzie,

Can you confirm?

Thanks!

From: Jamie Wise <Jamie.Wise@davita.com>
Sent: Thursday, March 19, 2020 9:06 AM
To: Carley St. Clair <Carley.StClair@davita.com>
Subject: FW: Disaster Relief Policy

Hi,

Has this been added to the spreadsheet?

Jamie Wise

Executive Assistant to:

Debbie Wolfe, Vice President | People Services Operations

Tiffany Bishop, Senior Director | People Services | Total Rewards

Shannon Gibbons, Senior Director | People Services Neighborhoods

DaVita Kidney Care



From: Oliver McKinstry <Oliver.McKinstry@davita.com>
Sent: Wednesday, March 18, 2020 4:07 PM
To: Debbie Wolfe <Debbie.Wolfe@davita.com>
Cc: Jamie Wise <Jamie.Wise@davita.com>
Subject: RE: Disaster Relief Policy

I also sent the answer to Carley, so she may have already added to Smartsheets. Sorry to duplicate work!

Oliver McKinstry
Senior Director, People Services
(612) 963-2393 OLIVER.mckinstry@davita.com

From: Debbie Wolfe
Sent: Wednesday, March 18, 2020 4:05 PM
To: Oliver McKinstry <Oliver.McKinstry@davita.com>
Cc: Jamie Wise <Jamie.Wise@davita.com>
Subject: RE: Disaster Relief Policy

Thank you.

Jamie- pls input the question and answer below into smartsheets thx

From: Oliver McKinstry <Oliver.McKinstry@davita.com>
Sent: Wednesday, March 18, 2020 4:58 PM
To: Nikki Rogers <Nikki.Rogers@davita.com>; Elisabeth Wright <Elisabeth.Wright@davita.com>
Cc: Debbie Wolfe <Debbie.Wolfe@davita.com>
Subject: RE: Disaster Relief Policy

Hi Nikki and Elisabeth,

Thanks for your patience on this. A very similar question came in from several different sources, so I needed some time to coordinate with the right folks on our answer. Below is what we came up with. The gist is that the Disaster Relief policy is really designed to address situations that prevent our clinics from operating or prevent our teammates from being able to get to work. That hasn't happened yet with COVID-19 and we're providing TMs letters to help them come to work even in jurisdictions that are on shelter in place. Let me know if you have any questions/concerns with the answer below.

~~~~~

While COVID-19 has introduced complexities into our operations, our centers remain open, teammates remain able to get to work, and the Disaster Relief policy has not gone into effect. If your area experiences emergency travel restrictions, you can find a letter that allows you to come to work [here](#). We take your health and safety seriously. If you become unable to get to work, please notify your leadership as soon as possible.

We provide life-sustaining care to our patients and need to continue doing so even during difficult situations, like the COVID-19 pandemic. The Disaster Relief policy was created to make sure we can continue to provide that care when declared emergencies or natural disasters prevent our facilities from operating or our teammates from being able to get to work. Local leadership (DVP, GVP, and PSD) and the Disaster Governance Council determine when and where the policy goes into effect based on the severity of the situation in their location. At this time, the policy has not gone into effect.

Oliver McKinstry  
Senior Director, People Services  
(612) 963-2393 [OLIVER.mckinstry@davita.com](mailto:OLIVER.mckinstry@davita.com)

**From:** Oliver McKinstry  
**Sent:** Monday, March 16, 2020 7:25 PM  
**To:** Nikki Rogers <[Nikki.Rogers@davita.com](mailto:Nikki.Rogers@davita.com)>; Elisabeth Wright <[Elisabeth.Wright@davita.com](mailto:Elisabeth.Wright@davita.com)>  
**Cc:** Debbie Wolfe <[Debbie.Wolfe@davita.com](mailto:Debbie.Wolfe@davita.com)>  
**Subject:** RE: Disaster Relief Policy

Agreed. I just sent my email to Legal. I'll keep you posted. Ultimately, this message may need to come from executives in more of a reminder of our mission, rather than a TM-level discussion about pay. In any case, we have good minds on it, so stay tuned.

Oliver McKinstry  
Senior Director, People Services  
(612) 963-2393 [OLIVER.mckinstry@davita.com](mailto:OLIVER.mckinstry@davita.com)

**From:** Nikki Rogers  
**Sent:** Monday, March 16, 2020 7:18 PM  
**To:** Oliver McKinstry <[Oliver.McKinstry@davita.com](mailto:Oliver.McKinstry@davita.com)>; Elisabeth Wright <[Elisabeth.Wright@davita.com](mailto:Elisabeth.Wright@davita.com)>  
**Cc:** Debbie Wolfe <[Debbie.Wolfe@davita.com](mailto:Debbie.Wolfe@davita.com)>  
**Subject:** RE: Disaster Relief Policy

Hi Oliver and Debbie-

I have had 2 RODs' call and discuss this with me tonight outside of Atlantic Stars Leadership team – I think, teammates are pulling up the handbook and starting to ask questions about pay – It was bound to happen with families starting to be impact by COVID 19 –

Just think, this is going to become a question, we need to answer-

Thanks for taking this one – appreciate it-

**From:** Oliver McKinstry <[Oliver.McKinstry@davita.com](mailto:Oliver.McKinstry@davita.com)>  
**Sent:** Monday, March 16, 2020 9:11 PM  
**To:** Nikki Rogers <[Nikki.Rogers@davita.com](mailto:Nikki.Rogers@davita.com)>; Elisabeth Wright <[Elisabeth.Wright@davita.com](mailto:Elisabeth.Wright@davita.com)>  
**Cc:** Debbie Wolfe <[Debbie.Wolfe@davita.com](mailto:Debbie.Wolfe@davita.com)>  
**Subject:** RE: Disaster Relief Policy

Hi team,

First of all, thanks for your patience on this. I know we're all swamped and I've only finally had time to think about this question.

I received a similar question from a few sources today and my inclination was to respond with some of Mandy Hale's talking points on needing to pull together to care for our patients, many of whom have infectious diseases other than COVID-19 as well. But in looking at this exchange and the others, I think folks want a response to the text of the actual policy. I'm going to need to run that by legal. I'm going to do that tonight and hope to get back to you tomorrow. If you think the other talking points are sufficient, let me know and I can get you a bit more on that.

PS-Hi Elisabeth, long time! Hope you've been well!

Oliver McKinstry  
Senior Director, People Services  
(612) 963-2393 [OLIVER.mckinstry@davita.com](mailto:OLIVER.mckinstry@davita.com)

**From:** Nikki Rogers  
**Sent:** Monday, March 16, 2020 2:14 PM  
**To:** Elisabeth Wright <[Elisabeth.Wright@davita.com](mailto:Elisabeth.Wright@davita.com)>  
**Cc:** Oliver McKinstry <[Oliver.McKinstry@davita.com](mailto:Oliver.McKinstry@davita.com)>; Debbie Wolfe <[Debbie.Wolfe@davita.com](mailto:Debbie.Wolfe@davita.com)>  
**Subject:** RE: Disaster Relief Policy

Oliver-

You have been involved more than I have in these conversations around pay – I am curious, what your talking points would be around this ?

I am certain , I am not the first Palmer, who has bought this up –

Thank you

**From:** Elisabeth Wright <[Elisabeth.Wright@davita.com](mailto:Elisabeth.Wright@davita.com)>  
**Sent:** Monday, March 16, 2020 3:32 PM  
**To:** Kevin Spring <[Kevin.Spring@davita.com](mailto:Kevin.Spring@davita.com)>; Heather Sconce <[Heather.Sconce@davita.com](mailto:Heather.Sconce@davita.com)>  
**Cc:** Nikki Rogers <[Nikki.Rogers@davita.com](mailto:Nikki.Rogers@davita.com)>  
**Subject:** RE: Disaster Relief Policy

Nikki- can you help with these talking points?

**From:** Kevin Spring  
**Sent:** Monday, March 16, 2020 3:26 PM  
**To:** Elisabeth Wright <[Elisabeth.Wright@davita.com](mailto:Elisabeth.Wright@davita.com)>; Heather Sconce <[Heather.Sconce@davita.com](mailto:Heather.Sconce@davita.com)>  
**Subject:** Disaster Relief Policy

Ft Belvoir TMs asked if the disaster relief policy would be in effect given the fact that the President has declared an emergency.

I've pasted the entire policy from the TM handbook below and highlighted the 50% premium pay they're asking about. It could be interpreted that all facilities should get 50% premium pay. If we're not going to offer any kind of premium pay, there should be good talking points about why this policy is not being put into effect.

## 4.12 Disaster Relief Policy

The Disaster Relief Policy provides for pay continuance during an emergency time

frame [REDACTED]

[REDACTED]. A declared emergency or natural disaster shall be proclaimed by either the President of the United States, a state Governor or other elected official, or if local leadership (DVP/Palmer) deems it appropriate. In the event of a state or federally declared natural disaster, this policy provides information relative to pay practices, work schedules, and facility or business office coverage. This policy supersedes and replaces any past practice or policy relating to pay practices, work schedules, and facility coverage in the event of a declared emergency or natural disaster.

The language used in this policy is not intended to constitute a contract of employment, either express or implied, to give teammates any additional rights to continued employment, pay or benefits, or to otherwise change DaVita's policy of at-will employment.

#### EMERGENCY TIME FRAME

[REDACTED]

#### PAY PRACTICE FOR NON-EXEMPT TEAMMATES

If a facility or business office is closed due to a declared emergency or natural disaster as defined above, non-exempt teammates will be paid for their regularly scheduled hours at their base rate of pay during the designated emergency time frame.

If a facility or business office opens late or closes early due to a declared emergency or natural disaster as defined above, teammates will be notified promptly of the approved opening or closing time. Nonexempt teammates who arrive or leave at that approved opening or closing time will be paid their hourly rate of pay for their regularly scheduled hours, unless state law provides otherwise. Any non-exempt teammate who arrives at work after the approved opening time or leaves work before the approved closing time will be paid only for the time

actually worked, in which case, the teammate should utilize PTO in accordance with the regular PTO Policy.

If a designated facility or business office is open during the emergency time frame, teammates who report to their location and work their scheduled hours will be paid premium pay for all hours worked. Unless state law requires otherwise, premium pay will be one-and-one-half (1.5) times the teammate's base rate of pay.

**Non-exempt traveling teammates, as part of the Disaster Volunteer Group, who provide shift coverage at sites assigned by local Leadership will be paid a 50 percent premium for all compensable straight time hours, including travel time.**

If a designated facility or business office is open during the emergency time frame and teammates are unable to work, teammates should utilize PTO in accordance with the PTO policy.

Non-exempt teammates who are unable to report to their facility or business office should not perform any work remotely unless approved by a supervisor. If any work is done remotely, teammates must report time worked via time stamps in the timekeeping system and will be paid accordingly.

**Kevin Spring**

Regional Operations Director, Atlantic Stars Regions 1 and 4

Cell: 202.870.7743

Fax: 833.762.6068

WebEx: <https://village.webex.com/meet/kevin.spring>

Email: [kevin.spring@davita.com](mailto:kevin.spring@davita.com)



**From:** Lindsay Burns  
**To:** Jeremy Eaves  
**Sent:** 3/19/2020 8:07:18 PM  
**Subject:** RE: Compensation

**EXHIBIT**

**21**

Eaves  
5/10/2021  
Olivia Pennella, CCR

Okay thank you. I am going to work with Mandy to use some of the talking points she had on the VOV call on Tuesday to remind people that they are essential. Thanks!

**From:** Jeremy Eaves  
**Sent:** Wednesday, March 18, 2020 10:17 AM  
**To:** Lindsay Burns <Lindsay.Burns@davita.com>  
**Subject:** RE: Compensation

Ah, I see.

Okay. . .

“The Disaster Relief Policy provides for pay continuance during an emergency time frame when a declared emergency or natural disaster prevents teammates from performing their regular duties. . . .”

PAY PRACTICE FOR NON-EXEMPT TMS as defined in the pay practices policy

- FACILITY CLOSED
- FACILITY OPENS LATE OR CLOSES EARLY
- FACILITY REMAINS OPEN BUT TEAMMATES NOT ABLE TO COME INTO WORK (e.g., roads blocked, gas shortages)
  - o Teammates not able to work—use PTO, and approved by supervisor
  - o Teammates able to make it in and get to the facility are paid at 1.5 or as defined by state law

With this pandemic, teammates are not disrupted in their ability to perform their regular duties. All facilities remain open (you may get pushback that we closed the CBOs—but that is not the case—those offices remain open and we are encouraging tms to work from home).

I hope that helps.

--J

**From:** Lindsay Burns  
**Sent:** Wednesday, March 18, 2020 9:48 AM  
**To:** Jeremy Eaves <Jeremy.Eaves@davita.com>  
**Subject:** FW: Compensation

Hey Jeremy,

This is an example where TMs are referencing an emergency situation. We explained that we are not paying hazard pay but this may be where confusion is coming from.

Thanks,

**Lindsay Burns**  
Director, Operations Innovation

**DaVita Kidney Care**  
2000 16<sup>th</sup> Street | Denver, CO 80202  
(720) 631-6681 office | (720) 839-1136 mobile

DAVITA\_003375



**From:** Abegail Fontanilla  
**Sent:** Monday, March 16, 2020 12:55 PM  
**To:** covid19questions <[covid19questions@davita.com](mailto:covid19questions@davita.com)>  
**Cc:** Compensation Wage and Hour <[CompensationWageandHour@davita.com](mailto:CompensationWageandHour@davita.com)>  
**Subject:** Compensation

Hello,

I was scrolling through our Teammate Handbook and came up with a question. Governor of Virginia, Mr. Ralph Northam and our president Mr. Donald Trump have declared "a state of emergency" last week. In Section 4 of Pay Practices, it states that "if a designated facility is open during the emergency time frame, teammates who report to their location and work their scheduled hours will be paid premium pay for all hours worked. Unless state law requires, otherwise, premium pay will be one and one half times the teammates base rate of pay.." Does it not apply to our situation right now? Specially with all other kinds of clinics and businesses are closed due to COVID 19.

Thank you,  
**Abegail Fontanilla**  
Clinical Administrative Assistant  
Patient Care Technician

**DaVita Kidney Care**  
**Continental Dialysis Center of Alexandria #00687**  
5999 Stevenson Ave Suite 100 Alexandria, Virginia 22304  
(703) 751-6115 office | (703) 751-3892 fax

"Confidentiality Notice: This message is confidential intended for the named recipient(s) and may contain information that is (I) proprietary to the sender, and/or (II) privileged, confidential, and/or otherwise exempt from disclosure under applicable state and federal law, including but not limited to, privacy standards imposed pursuant to the federal health insurance portability and accountability act of 1996 ("HIPAA"). If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify me immediately by reply email or telephone, remove it from your system, and destroy the original transmission and its attachments without reading or saving them. Thank you."

**From:** Debbie Wolfe  
**To:** Jeremy Eaves; Oliver McKinstry  
**CC:** Shawn Zuckerman  
**Sent:** 3/17/2020 4:27:08 PM  
**Subject:** Disaster policy/ pay questions

**EXHIBIT**

**23**

Eaves  
5/10/2021  
Olivia Pennella, CCR

FYI below- I'm thinking we should add a question/answer about this to the FAQs: Oliver, I know you were looped in over the last couple of days regarding disaster pay. Essentially, questions are starting to bubble up around premium pay during disaster/emergencies. Relevant part of the policy is captured in email trail below:

My stab:

The Disaster Policy is in place to ensure teammates are supported when a declared emergency or natural disaster prevents teammates from performing their regular duties. While the corona virus has introduced complexities to our normal daily operations in caring for our patients, our centers remain open and teammates are able to continue caring for our patients.

We could probably add more to this but the more I added, the less effective my argument became. The problem is the wording around Emergency declaration- if the policy simply referred to natural disasters, it would be clear cut.

You guys are experts at this- feel free to take any or none of my attempt

**From:** Kenny Gardner <kenny.gardner@davita.com>

**Sent:** Tuesday, March 17, 2020 10:55 AM

**To:** Debbie Wolfe <Debbie.Wolfe@davita.com>; Carley St. Clair <Carley.StClair@davita.com>; Erica Edwards <Erica.Edwards@davita.com>; Colleen Arthur <Colleen.Arthur@davita.com>; Jeremy Eaves <Jeremy.Eaves@davita.com>

**Subject:** RE: Interview Process Recommendations Updated

The answer is no. But I'm copying Colleen so that it is on her radar, I don't want to make sure the President's declaration does not conflict with our own policy.

Kenny

**From:** Debbie Wolfe

**Sent:** Tuesday, March 17, 2020 9:53 AM

**To:** Kenny Gardner <kenny.gardner@davita.com>; Carley St. Clair <Carley.StClair@davita.com>; Erica Edwards <Erica.Edwards@davita.com>

**Subject:** RE: Interview Process Recommendations Updated

Essentially, TMs are beginning to ask if the disaster relief policy would be in effect given the fact that the President has declared an emergency.

Below is an excerpt from the policy outlining conditions for 50% premium pay. Some feel it could be interpreted that all facilities should get 50% premium pay given the national disaster declaration.

Questions have surfaced from Titan and now Endeavor

**If a designated facility or business office is open during the emergency time frame, teammates who report to their location and work their scheduled hours will be paid premium pay for all hours worked. Unless state law requires otherwise, premium pay will be one-and-one-half (1.5) times the teammate's**



**base rate of pay.**

**Non-exempt traveling teammates, as part of the Disaster Volunteer Group, who provide shift coverage at sites assigned by local Leadership will be paid a 50 percent premium for all compensable straight time hours, including travel time.**

## **4.12 Disaster Relief Policy**

The Disaster Relief Policy provides for pay continuance during an emergency time frame when a declared emergency or natural disaster prevents teammates from performing their regular duties. A declared emergency or natural disaster shall be proclaimed by either the President of the United States, a state Governor or other elected official, or if local leadership (DVP/Palmer) deems it appropriate. In the event of a state or federally declared natural disaster, this policy provides information relative to pay practices, work schedules, and facility or business office coverage. This policy supersedes and replaces any past practice or policy relating to pay practices, work schedules, and facility coverage in the event of a declared emergency or natural disaster.

The language used in this policy is not intended to constitute a contract of employment, either express or implied, to give teammates any additional rights to continued employment, pay or benefits, or to otherwise change DaVita's policy of at-will employment.

### **EMERGENCY TIME FRAME**

The emergency time frame (and affected facility or business office) will be identified on a case-by-case basis by local leadership (DVP, GVP and PSD) and the Disaster Governance Council, dependent on the severity of the disaster and location.

### **PAY PRACTICE FOR NON-EXEMPT TEAMMATES**

If a facility or business office is closed due to a declared emergency or natural disaster as defined above, non-exempt teammates will be paid for their regularly scheduled hours at their base rate of pay during the designated emergency time frame.

If a facility or business office opens late or closes early due to a declared emergency or natural disaster as defined above, teammates will be notified promptly of the approved opening or closing time. Nonexempt teammates who arrive or leave at that approved opening or closing time will be paid their hourly rate of pay for their regularly scheduled hours, unless state law provides otherwise. Any non-exempt teammate who arrives at work after the approved opening time or leaves work before the approved closing time will be paid only for the time actually worked, in which case, the teammate should utilize PTO in accordance with the regular PTO Policy.

**If a designated facility or business office is open during the emergency time frame, teammates who report to their location and work their scheduled hours will be paid premium pay for all hours worked. Unless state law requires otherwise, premium pay will be one-and-one-half (1.5) times the teammate's base rate of pay.**

**Non-exempt traveling teammates, as part of the Disaster Volunteer Group, who provide shift coverage at sites assigned by local Leadership will be paid a 50 percent premium for all compensable straight time hours, including travel time.**

If a designated facility or business office is open during the emergency time frame and teammates are unable to work, teammates should utilize PTO in accordance with the PTO policy.

Non-exempt teammates who are unable to report to their facility or business office should not perform any work remotely unless approved by a supervisor. If any work is done remotely, teammates must report time worked via time stamps in the timekeeping system and will be paid accordingly.

## **4.3 Overtime Pay**

Non-exempt teammates may be required to work overtime, depending on patient or business needs, consistent with state laws (see Teammate Classifications policy).

Non-exempt teammates will be paid one-and-one-half times their regular rate of pay for

hours worked in excess of 40 in any workweek. The workweek begins at 12:00 a.m. on Sunday morning and ends at 11:59 p.m. on the following Saturday night. Absences (with or without pay) will not count as hours worked in computing overtime pay.

In certain locations, state or local regulations or other contractual agreements may supersede this policy and require overtime to be paid differently.

All overtime must be authorized in advance by the teammate's supervisor. If teammates work unauthorized overtime, they will be subject to disciplinary action, up to and including

**From:** Kenny Gardner <[kenny.gardner@davita.com](mailto:kenny.gardner@davita.com)>

**Sent:** Tuesday, March 17, 2020 10:23 AM

**To:** Debbie Wolfe <[Debbie.Wolfe@davita.com](mailto:Debbie.Wolfe@davita.com)>; Carley St. Clair <[Carley.StClair@davita.com](mailto:Carley.StClair@davita.com)>; Erica Edwards <[Erica.Edwards@davita.com](mailto:Erica.Edwards@davita.com)>

**Subject:** RE: Interview Process Recommendations Updated

What is disaster pay policy?

**From:** Debbie Wolfe

**Sent:** Tuesday, March 17, 2020 9:22 AM

**To:** Carley St. Clair <[Carley.StClair@davita.com](mailto:Carley.StClair@davita.com)>; Kenny Gardner <[kenny.gardner@davita.com](mailto:kenny.gardner@davita.com)>; Erica Edwards <[Erica.Edwards@davita.com](mailto:Erica.Edwards@davita.com)>

**Subject:** RE: Interview Process Recommendations Updated

Do we also have disaster pay policy on the list?

**From:** Carley St. Clair <[Carley.StClair@davita.com](mailto:Carley.StClair@davita.com)>

**Sent:** Tuesday, March 17, 2020 9:13 AM

**To:** Debbie Wolfe <[Debbie.Wolfe@davita.com](mailto:Debbie.Wolfe@davita.com)>; Kenny Gardner <[kenny.gardner@davita.com](mailto:kenny.gardner@davita.com)>; Erica Edwards <[Erica.Edwards@davita.com](mailto:Erica.Edwards@davita.com)>

**Subject:** RE: Interview Process Recommendations Updated

I have this on our leads check in agenda for this morning.

Thanks!

**From:** Debbie Wolfe <[Debbie.Wolfe@davita.com](mailto:Debbie.Wolfe@davita.com)>

**Sent:** Tuesday, March 17, 2020 8:07 AM

**To:** Kenny Gardner <[kenny.gardner@davita.com](mailto:kenny.gardner@davita.com)>; Erica Edwards <[Erica.Edwards@davita.com](mailto:Erica.Edwards@davita.com)>

**Cc:** Carley St. Clair <[Carley.StClair@davita.com](mailto:Carley.StClair@davita.com)>

**Subject:** RE: Interview Process Recommendations Updated

In addition to interview protocol, a few additional questions are starting to pop:

1. Onboarding/training- should we delay?
2. Starting wage- should we reduce in light of potential recession

**From:** Kenny Gardner <kenny.gardner@davita.com>

**Sent:** Monday, March 16, 2020 11:51 PM

**To:** Erica Edwards <Erica.Edwards@davita.com>; Debbie Wolfe <Debbie.Wolfe@davita.com>

**Cc:** Carley St. Clair <Carley.StClair@davita.com>

**Subject:** RE: Interview Process Recommendations Updated

Let's carve out time to figure this out, need to move this up the priority list.

Kenny

**From:** Erica Edwards

**Sent:** Monday, March 16, 2020 9:57 PM

**To:** Kenny Gardner <kenny.gardner@davita.com>; Debbie Wolfe <Debbie.Wolfe@davita.com>

**Cc:** Carley St. Clair <Carley.StClair@davita.com>

**Subject:** FW: Interview Process Recommendations Updated

I apologize for multiple emails. Received some additional feedback from Elise and Priya moments ago.

Updated guidance provides additional clarity on :

- Recruiter Screen
- Live interview options
- Considerations – include training bandwidth, TM wages and candidate guidance

Open questions to task force:

- Revisit interviews in clinics with appropriate parameters
- Allowing hiring decisions to be made via virtual Interviews (by Palmer discretion, limited ability to conduct live interviews)
- Consider wage adjustments where needed
- Discuss training bandwidth/accommodating delayed starts

Updated Guidance:

1. Recruiter phone screen
  - a. Recruiters will assist with any scheduling or technology needs/preferences
  - b. Ensure Recruiter screen is thorough enough to increase pass through ratio to alleviate burden on FAs
2. Hiring Manager Interview Options:
  - a. Live Interviews
    - i. Off-site live interview in preferred centralized location (e.g. regional/divisional office or other open public business)
      1. Designated Regional hiring decision maker preferred (takes fewer people off the floor)
        - a. Live interviews could be conducted by various leaders other than FA dependent upon availability (PSM, CSS, ROD, etc)
      2. Panel Interview (could be one person 'live' with others virtual)
        - ii. Off-hours live interview in clinic (revisit with taskforce)
          1. DeNovos and closed clinics prioritized for cohort hiring
          2. Non-cohort hiring executed at operational facility (end of day or Sundays)
          3. Follow current process or streamline to fit needs
          4. We need guidance on wearing masks, pre-screening and cleaning practice
    - b. Virtual/Video Interview (e.g. WebEx, FaceTime, Google Duo)
      - i. When live interviews are not possible
        1. Could be panel or 1:1
        - ii. Palmer discretion to make hiring decisions based on video only

Decisions Needed:

- Revisit allowing off-hours interviewing in clinics (operational, DeNovos, closed facilities)
  - o Finalize procedure for cleaning (before/after)
- Will leaders be allowed to make hiring decision via video interviewing only?
  - o Many of our leaders seem to have a comfort level with this approach
  - o San Francisco Bay area first to “shelter in place”

Other considerations:

- Do we have bandwidth to train new TMs? Should we consider delaying start dates to accommodate appropriate training?
- Review starting rates for new TMs. Are we competitive enough given current demand?
- Medical risk on live interviewing for TMs or Candidates. Provide additional guidance to candidates on what to expect/procedures
- Candidates may have reservations to interview in person, candidates are starting to cancel in person interviews
- Other organizations are starting to move to virtual hiring process (not requiring live interviews)

Next Steps:

- Review with Debbie, Kenny and Task Force
- RMs to work with business leaders to determine local processes by region

**From:** Priya Sequeira

**Sent:** Monday, March 16, 2020 7:57 PM

**To:** Elise Duke <[Elise.Duke@davita.com](mailto:Elise.Duke@davita.com)>; Erica Edwards <[Erica.Edwards@davita.com](mailto:Erica.Edwards@davita.com)>

**Subject:** RE: Interview Process Recommendations

Elise – I agree with those points.

Erica – On bullet 2a.i. – the DeNovos and closed clinics are the ones we’ll be using for cohorts. If divisional offices are not available, we should try for end of day at an operational, non-cohort facility.

I escalated to Rebecca over the weekend, but one other question is if we should be delaying start dates at all. If we have a skeleton staff, I’m not sure we’ll be able to properly train new teammates. Lastly, a question on rates has come up: given the current and predicted downturn, do we revisit rates for new TMs...

**From:** Elise Duke <[Elise.Duke@davita.com](mailto:Elise.Duke@davita.com)>

**Sent:** Monday, March 16, 2020 10:42 PM

**To:** Erica Edwards <[Erica.Edwards@davita.com](mailto:Erica.Edwards@davita.com)>; Priya Sequeira <[Priya.Sequeira@davita.com](mailto:Priya.Sequeira@davita.com)>

**Subject:** RE: Interview Process Recommendations

This looks like a good summary,

Few things:

1. In terms of prioritization, I would have put divisional office ahead of clinic after hours
2. Do we adjust the recruiter phone screen to beef up the phone component to reduce the number of “misses” we pass on to FAs?
3. Should we mention the in person interviews may be handled by someone other than the hiring manager – CSS, PSM, other FA depending on availability

Let me know if this resonates

**From:** Erica Edwards <[Erica.Edwards@davita.com](mailto:Erica.Edwards@davita.com)>

**Sent:** Monday, March 16, 2020 5:14 PM

**To:** Elise Duke <[Elise.Duke@davita.com](mailto:Elise.Duke@davita.com)>; Priya Sequeira <[Priya.Sequeira@davita.com](mailto:Priya.Sequeira@davita.com)>

**Subject:** Interview Process Recommendations

Elise & Priya,

I tried to capture our conversation from earlier this afternoon. Can you provide a quick review? The attachments show the options and guidance for virtual interviews.

I am speaking with Debbie in twenty minutes to get her thoughts as well before this is sent to the task force.

1. Recruiter phone screen
  - a. Recruiters will assist with any scheduling or technology needs/preference
  - b. Ensure Recruiter screen is thorough enough to increase pass through ratio to alleviate burden on FAs
2. Hiring Manager Interview Options:
  - a. Live Interviews
    - i. Off-site live interview in preferred centralized location (e.g. regional/divisional office or other open public business)
      1. Designated Regional hiring decision maker preferred (takes fewer people off the floor)
        - a. Live Interviews could be conducted by various leaders other than FA dependent upon availability (PSM, CSS, ROD, etc)
      2. Panel Interview (could be one person 'live' with others virtual)
        - ii. Off-hours live interview in clinic (revisit with taskforce)
          1. Denovos and closed clinics prioritized for cohort hiring
          2. Non-cohort hiring executed at operational facility (end of day or Sundays)
          3. Follow current process or streamline to fit needs
          4. We need guidance on wearing masks, pre-screening and cleaning practice
    - b. Virtual/Video Interview (e.g. WebEx, FaceTime, Google Duo)
      - i. When live interviews are not possible
        1. Could be panel or 1:1
          - ii. Palmer discretion to make hiring decisions based on video only

#### Decisions Needs:

- Revisit allowing off-hours interviewing be allowed in clinics?
  - o Finalize procedure for cleaning (before/after)
- Will leaders be allowed to make hiring decision via video interviewing only?
  - o Many of our leaders seem to have a comfort level with this approach
  - o San Francisco Bay area first to "shelter in place"

#### Other considerations:

- Do we have bandwidth to train new TMs? Should we consider delaying start dates to accommodate appropriate training?
- Review starting rates for new TMs. Are we competitive enough given current demand?
- Medical risk on live interviewing for TMs or Candidates
- Candidates may have reservations to interview in person, candidates are starting to cancel in person interviews
- Other organizations are starting to move to virtual hiring process (not requiring live interviews)

#### Next Steps:

- Review with Debbie, Kenny and Task Force
- RMs to work with business leaders to determine local processes by region